# IFAR® Journal

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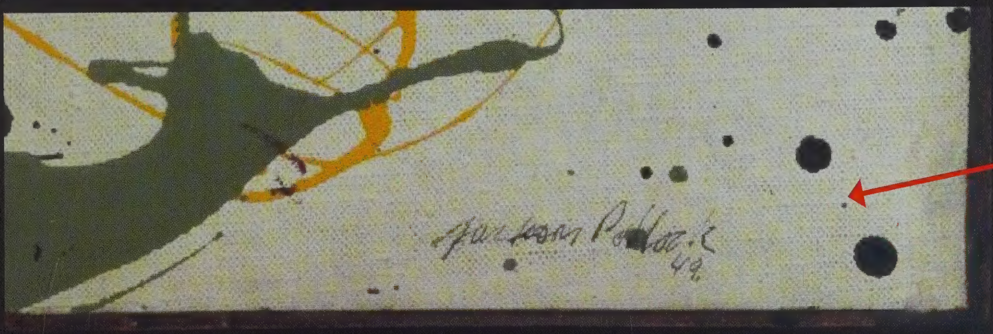
*In this issue*

## 20/20 Hindsight:
## Lessons from the Knoedler/Rosales Affair



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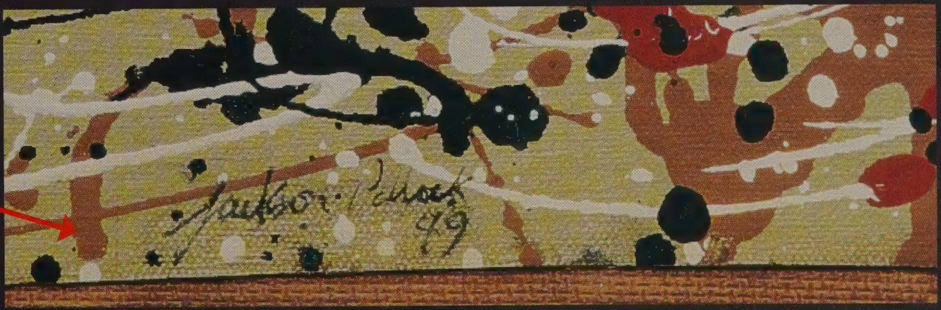

NOT

**Swiss Cultural Property Law Goes into Effect**

**Details on Picasso in Limbo in Spain**

**New Ruling on *Adam* and *Eve***

INCORPORATING

**STOLEN ART ALERT®**

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IFAR® Journal

INTERNATIONAL FOUNDATION FOR ART RESEARCH

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COVER: (Top): JACKSON POLLOCK, *No. 23, 1949* (detail);
(Bottom): IFAR #02.04 (detail). See story on p. 40.

# AVOWALS AND DISAVOWALS: WHEN CAN AN ARTIST SAY, "IT'S NOT MINE!"?

There seems to be no shortage of artists disavowing works attributed to them. The cases below – involving Cady Noland, Peter Doig, and Lucien Freud – run the gamut of claims, each involving a different legal foundation.

## CABIN FEVER

Artist Cady Noland is at it again.

Known for revealing the darker side of American culture in her provocative sculptures and installations, Noland's work is exhibited around the world and fetches some of the highest prices at auction for a living female artist. Yet she has also become known for her legal entanglements, specifically those in which she calls upon "moral rights" granted by the Visual Artists Rights Act of 1990 (VARA).[1]

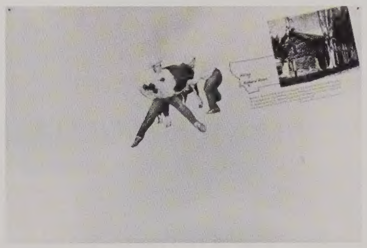

**FIGURE 1.** **CADY NOLAND, *Cowboys Milking*, 1990. Aluminum print, disavowed by the artist.**

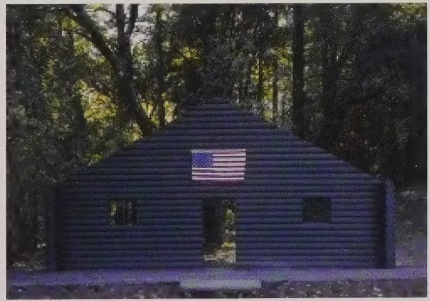

**FIGURE 2.** **CADY NOLAND, *Log Cabin*, 1990. Wood, American flag, metal rings, and construction plans, 141 ¾ x 218 x 31 ½″. Work disavowed by the artist.**

Under VARA, an artist has the rights of "attribution" and "integrity," meaning she can claim attribution of a work she created, or disclaim attribution of one she did not. Living artists may also disavow works in the event of modifications considered "prejudicial" to their "honor or reputation." There are exceptions: artists cannot disavow works based on alterations due to the passage of time or conservation. Courts, however, have not fully examined the scope of these attribution rights or exceptions.

In a rare recent interview, Noland lamented that, although she would like to "get a studio and start making [new] work," tracking the ownership and display of her older pieces has become a full-time job.[2] In 2012 and 2013, the *IFAR Journal* reported on perhaps the most famous dispute to date involving Noland, *Jancou v. Sotheby's*.[3]

In that dispute, gallerist Marc Jancou sued both Sotheby's and Noland when the aluminum print he had consigned for sale, *Cowboys Milking* **(FIG. 1)**, was pulled from auction after being disavowed by Noland because of minor "crimps" in its corners, although commentators opined that the work was in good condition. The case was dismissed without the court addressing whether such "modifications" fall under VARA's passage-of-time exception.

A more recent suit, *Mueller v. Michael Janssen Gallery*, which is pending in the United States District Court for the Southern District of New York, is also centered on VARA and a work disavowed by Noland, although it is technically a breach of contract dispute between a collector and gallery.[4]

The facts of the case date back to 1990, when German collector

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[1] 17 U.S.C. §106A.

[2] Sarah Thorton, *33 Artists in 3 Acts* (New York: Norton, 2014), p. 328.

[3] *Jancou Fine Art, Ltd. v. Sotheby's*, No. 650316-2012 (N.Y. Sup. Ct. Nov. 13, 2012); For IFAR's previous coverage, see "Lawsuit May Test Scope of Artist's Rights," *IFAR Journal*, Vol. 13, no. 4 (2012), p. 15 and "Not What It Once Was: Artist's Disavowal of Her Work Stands; Appeal Filed," *IFAR Journal*, Vol. 14, nos. 1 & 2 (2013).

[4] *Mueller v. Michael Janssen Gallery PTE. Ltd.* No. 1:15-CV-04827 (S.D.N.Y. Jan. 8, 2016).

Wilhelm Schürmann purchased the newly completed Noland sculpture *Log Cabin* **(FIG. 2)** from Galerie Max Hetzler in Cologne and proceeded to show the work at various museums. During one long-term loan, *Log Cabin* was displayed outdoors, exposed to the elements, for nearly a decade. In 2011, the work was restored according to its original specifications and exhibited in Berlin. Noland raised no public objection to the restoration at that time.

In 2013, Cleveland museum patron Scott C. Mueller purchased *Log Cabin* from Schürmann for $1.4 million through Galerie Michael Janssen, Berlin. The sale was facilitated by New York art advisory Marisa Newman Projects. The contract between the Janssen gallery and Mueller stipulated that the gallery would buy back the work if Noland "affirmatively refused to acknowledge or approve legitimacy of the work." Although Newman advised on this contract provision, she also suggested to Mueller that disavowal by Noland was unlikely given that the restoration was carried out by the original fabricators of *Log Cabin*.

Prior to shipment of *Log Cabin*, Mueller's representatives notified Noland of the sale and the work's conservation history. Noland denounced the unauthorized restoration and insisted a notice stating she no longer approved of the work be included with any display or subsequent sale of *Log Cabin*. When Mueller attempted to exercise his buy-back option, Galerie Michael Janssen wired back only a fraction of the purchase amount.

In 2015, Mueller sued the Galerie for breach of contract, seeking to recover under his contractual buy-back option. Mueller voluntarily dismissed his original claim against Schürmann for unjust enrichment, and *Log Cabin* is presumed to still be in Germany.

The majority of the litigation centers on Mueller's suit against Newman for breach of fiduciary duty and unjust enrichment. Newman has moved to dismiss these charges, and litigation is ongoing. The case has not progressed sufficiently for the court to address whether Noland's denounced restoration of *Log Cabin* falls under the conservation exception to VARA.

## DOIG OR DOIGE?

VARA was enacted to provide visual artists in the United States with moral rights that had long been granted and strictly enforced in European countries like France, where the *droit moral* is more extensive. The relatively recent adoption of VARA in the U.S. (1990) and its limited case law leave many issues unsettled, permitting an artist like Noland, who is on record opposing the commodification of art, to stretch the limits of what many believe was intended for artists' disavowal rights. But without VARA's protection, artists have a more difficult time challenging the use of their names for works they explicitly deny creating.

"The relatively recent adoption of VARA in the U.S. (1990) and its limited case law leave many issues unsettled ..."

Such was the case with *Fletcher v. Doig*, a suit in the United States District Court for the Northern District of Illinois, Eastern Division, decided on August 23, 2016.[5] There, internationally known artist Peter Doig successfully defended his right to

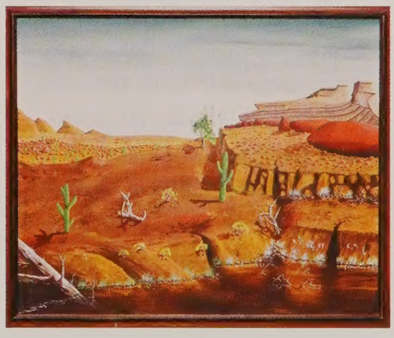

**FIGURE 3. PETER DOIGE, *Untitled*, 1976. Acrylic on linen, 34 x 41½″**

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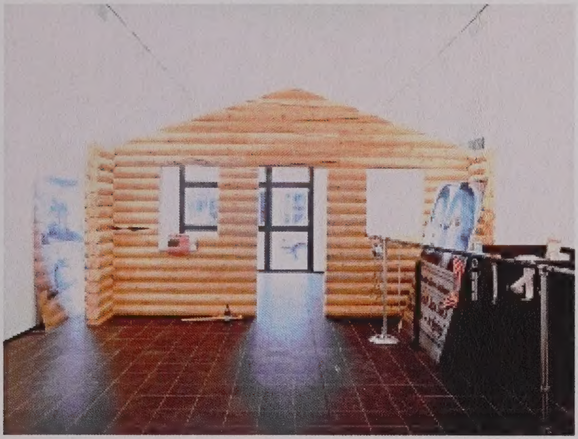
[5] Fletcher Verified Complaint, April 30, 2013, ECF No. 1; Doig Memorandum of Law in Support of His Motion for Summary Judgment, December 11, 2015, ECF No. 160-1.



NB: Please note, the Cady Noland sculpture illustrated at left is the *Log Cabin* at issue in this case. Figure 2, p. 2 in this issue, Vol. 17, nos. 2&3, incorrectly illustrates a later (1993) version of *Log Cabin*.

disavow a work he said repeatedly he didn't paint, but was forced to prove in court.

In 2011, a Canadian corrections officer named Robert Fletcher consigned an untitled landscape **(FIG. 3)** signed "1976 Pete Doige" (with an "e") to Bartlow Gallery, Chicago. Fletcher claimed the canvas was an early work by Doig (spelled without the "e"), whose landscapes have sold for as much as $25 million at auction.

Fletcher and the Bartlow Gallery intended to sell the painting through Leslie Hindman Auctioneers, but the Chicago auction house declined to pursue a sale after Doig's disavowal. In 2013, Fletcher sued Doig and his representatives for purposefully interfering with this "prospective economic advantage," which he estimated to be worth millions of dollars. In short, Fletcher sought at least five million dollars and a court declaration that the work was a genuine Doig. His attorneys argued that Doig could not disavow the landscape, as it was made prior to the enactment of VARA, which is not retroactive.

Indeed, the story began in Ontario, Canada fifteen years before VARA and involved an odd series of coincidences. Fletcher was then employed at the Thunder Bay Correctional Facility and taking courses at Lakehead University. He says that one day he encountered an incarcerated Lakehead classmate, seventeen-year-old Pete Doige (with an "e"), who had been convicted for LSD possession.

Fletcher later purchased the painting from a paroled Doige for a hundred dollars and hung it on his wall. Over 30 years passed before a friend noticed the landscape and wondered aloud whether it was by that famous contemporary artist with a very similar name.

Fletcher argued that Doig denied the attribution to cover up a troubled past. Doig, on the other hand, successfully moved for summary judgment in what he deemed a "meritless lawsuit." His team presented evidence that, although Peter Doig the artist did live in Canada as a teenager, he was not in Thunder Bay in 1976. Further, they located and corroborated records of a deceased Peter Edward Doige, which allegedly correspond to Fletcher's timeline. In fact, Judge Feinerman's opinion cites Doig's high school yearbook photos as incontrovertible proof he could not have been incarcerated in Thunder Bay at the time in question.

## FAKE, FORTUNE, OR SOMEWHERE IN-BETWEEN?

Another disavowal is making headlines across the pond, but this English controversy involves a deceased artist who rejected a painting in his lifetime that others now claim is genuine.

The artist is none other than Lucien Freud (1922-2011), whose signature large-scale nudes have sold for more than $56 million at auction. On July 17, 2016, a popular BBC television program called "Fake or Fortune?" publicly authenticated an early, unsigned portrait by Freud that the artist denied painting **(FIG. 4)**. In this instance, unlike the Doig or Noland examples above, acceptance of the painting by the scholarly community and the marketplace seems more likely.

Freud's disavowal began with a professional rivalry. The former owner of the painting, Dennis Wirth-Miller (1915-2001), and Freud had competed since their teenage years together at the East Anglian School of Painting. At some point in the late 1930s or early 1940s, Wirth-Miller managed to procure the disputed, unsigned portrait. When Wirth-Miller attempted to sell it through Christie's in 1985, Freud vehemently denied the attribution, which caused the auction house to withdraw it from a planned sale.

Wirth-Miller bequeathed the controversial portrait to London designer Jon Turner who began reinvestigating its attribution. In

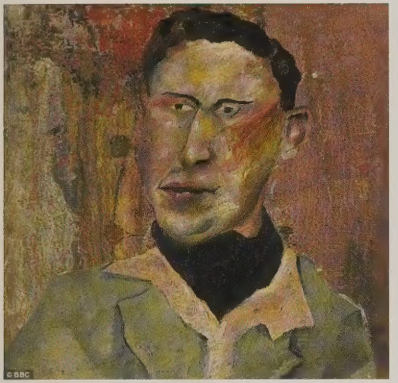


**FIGURE 4.** **LUCIEN FREUD, *Untitled (unfinished portrait)*, 1939. Oil on canvas. Image, ©BBC**

2006, he presented the work to Freud's daughter, Rose Boyt. In her filmed interview for the BBC program, Boyt does not explicitly affirm or deny that her father painted the portrait. Instead, she remembers purposefully not showing him the canvas. Freud frequently destroyed his works that he found unsatisfactory, and Rose feared he might try to destroy the portrait as well.

Nevertheless, Freud must have caught wind of Turner's inquiries. The same year that Turner brought the portrait to Boyt, Freud discussed the painting with Diana Rawstron, his solicitor and confidant. On camera, Rawstron opened her 2006 files to reveal her handwritten note from this conversation, which said that Freud admitted to beginning the portrait, but insisted that someone else finished it. Thus, he did not want his name attached to it. A decade later, BBC's "Fake or Fortune?" utilized scientific analysis to convincingly demonstrate the portrait was done by only one hand.

Faced with this information, the television program gathered a panel of experts to view the painting, including James Kirkman (Freud's longtime dealer), William Feever (Freud's biographer and friend), and Toby Treves (CEO of Modern Art Press, who is currently working on the new Freud catalogue raisonné). All three believe the portrait was painted by a young Lucien Freud in art school. With this attribution, it may be worth as much as £300,000.

The television episode rendered an art historical opinion, but did not explore the legal ramifications of its decision. Under the UK Copyright, Designs and Patents Act of 1988 (CDPA), an artist's right of attribution lasts his lifetime plus twenty years and passes to his representatives upon death.[6] Freud left his estate to his daughter and his solicitor, Diana. Conceivably, both could bring a moral rights infringement claim under the CDPA until 2031, but their participation on the program and Rawstron's presentation of the note suggests that this is unlikely.

Moreover, based on current evidence, Treves told BBC's "Fake or Fortune?" that he will include the painting in his forthcoming catalogue raisonné, but only in the appendix because he believes it is unfinished. His view appears to take into account the wishes of the artist. Although the recent consensus is that Freud painted the work, he evidently did not consider it a completed work. In a sense, Treves' decision takes us back to the Cady Noland disputes and the central question of this article: how much control should an artist have over attribution?

**—Sinclaire Devereux Marber**
Legal Intern, IFAR
and **Sharon Flescher**
Executive Director, IFAR

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[6] Copyright, Designs and Patents act of 1988 c. 48 ss. 84(1)(a)-5(b); 86(2); 95(5).

## SWITZERLAND GETS TOUGH ON CUSTOMS VIOLATORS

In response to mounting criticism that the country's freeports have enabled tax avoidance, money laundering, and the circumvention of international trade regulations and cultural heritage laws, the Swiss Federal Council has toughened the country's Customs Ordinance *(Zollverordnung)*. The revised law requires full disclosure about the source, type, and value of goods entering and exiting freeports and imposes strict time limits on how long items can be stored.

> "Will bowing to international pressure and changing times improve Switzerland's image and cut down on art-related criminal activity? Or will those who took advantage of lax Swiss freeports simply move their goods elsewhere?"

The amendments – which entered into force on January 1, 2016, but were a long time in planning – make clear the government's intention to introduce transparency and accountability into its famously opaque freeport system. Dealers and collectors have reacted by eyeing other tax-free, few-questions-asked, storage havens for their luxury goods. Will bowing to international pressure and changing times improve Switzerland's image and cut down on art-related criminal activity? Or will those who took advantage of lax Swiss freeports simply move their goods elsewhere? Only time will tell.

### WHY NOW?

Swiss freeports existed in a legal vacuum until 2007, when the Federal Council revised the country's Customs Act *(Zollgesetz)* and brought the freeports under the control of the Federal Customs Administration *(Eidgenossische Zollverwaltung*, or EZV). By that point, Swiss freeports had already become the subject of international scandals involving white-collar crimes and black market trafficking including, most notably, the 1995 seizure of Giacomo Medici's stash of approximately 10,000 smuggled artifacts stored in the Geneva Freeport.

Bad news kept coming. In response, the Federal Council launched a task force in 2013 to investigate abuses of the freeports and the international financial system more broadly. This "Interdepartmental Coordination Group to Combat Money Laundering and the Financing of Terrorism" (KGGT) issued a 135-page paper that brought grave concerns to light.[1] The KGGT's report, which the Federal Council first made public during its annual meeting on June 19, 2015, identified not only the usual suspects like private and universal banks, but also freeports and the art market, as operations particularly vulnerable to fraud, embezzlement, corruption, and criminal organization.[2]

Shortly after the publication of that report, Swiss authorities began promulgating anti-money-laundering strategies that served as a wake-up call to investors and collectors around the world – particularly those with links to the country's freeports. On November 18, 2015, the Federal Council announced that strict regulations on the use of freeports would be enacted in the form of amendments to the Customs Ordinance of 2006.[3] It was these changes that went into force on the first of January this year.

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[1] Interdepartementalen Koordinierungsgruppe zur Bekämpfung der Geldwäscherei und der Terrorfinanzierung, "Bericht über die nationale Beurteilung der Geldwäscherei und Terrorismusfinanzierungsrisiken in der Schweiz," June 2015.

[2] Schweizerische Eidgenossenschaft (Swiss Federal Council), "Erster nationaler Bericht über die Risiken der Geldwäscherei und der Terrorismusfinanzierung," 19 June 2016. See especially § 7.2.4 on freeports and § 7.2.5 on the art market.

[3] Schweizerische Eidgenossenschaft (Swiss Federal Council), "Bundesrat nimmt Zolllager in die Pflicht," 18 November 2015.

Reactions to these changes were immediate, especially in the art world. As reported extensively in the press, clients have already begun pulling their unmarked crates out of Swiss freeports in favor of those in Luxembourg, Liechtenstein, Singapore, Beijing, and even Delaware.[4]

## THE AMENDMENTS

Above all, the new amendments to the 2006 Customs Ordinance aim to create greater transparency in the Swiss freeport system. Under the previous customs law, effective through 2015, one needed only to reveal the name of the person depositing goods in the freeport – not the actual owner of said goods – for inventory purposes.[5] Under the new rules, however, Swiss freeport managers must register the owners' names – not just the names of the agents – along with descriptions of the type and estimated value of the goods. This change came in response to the KGGT's report, which revealed that monitoring the entry and exit of art, antiquities, precious metals, and other high-value goods in freeports is an essential step in cracking down on smuggling and money laundering.[6] Just as importantly, a buyer of luxury goods intending to export those goods via a Swiss freeport must now show proof of having a home or office abroad.[7]

Besides thus making it more difficult for people to hide their wares from the authorities, tax or otherwise, the new inventory requirements will also give customs officials greater power to monitor goods that enter and exit the freeports and thereby flag traffickers and money launderers. Yet loopholes potentially exist. An offshore company, for example, can be listed as the "owner" of goods in freeports, so long as a legal person stands behind that name.[8] Tenants may also sublet freeport vaults without necessarily assuming responsibility for what the sublessee does behind closed doors, although they must now disclose the name of the person to whom they are leasing a storage unit.[9]

> "Under the new rules, Swiss freeport managers must register the owners' names – not just the names of the agents – along with descriptions of the type and estimated value of the goods."

Also, because the customs administration (EZV) alone controls inventory records, it is unclear whether customs officials will share data about the type and value of goods entering and exiting the freeports. At least at this point, the Swiss government has no integrated system through which such information is, or even can be, automatically distributed to other government offices (e.g., to the Ministry of Finance).[10] The fact that the new law requires electronic storage of inventory records suggests that a move towards exactly this kind of integrated system may be in the works.[11]

The imposition of a six-month time limit on the freeport storage of goods intended for export may prove particularly troubling for long-term clients.[12] The limit is designed to create a clearer delineation between goods truly intended for export and those being indefinitely stored, tax-free and with very few controls. Although this six-month limit may be extended under specific circumstances by written application, the EZV will grant a maximum of three six-month extensions before revoking the export permit (meaning there is a two-year absolute maximum storage limit). The clear intention is to root out both tax evaders and the smugglers who have used the freeports as entrepôts for illicit trade.

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[4] Hugo Miller, "Art Collectors Quit Scandal-Hit Geneva," *Bloomberg News,* 28 April 2016; John Letzing and Max Colchester, "Oligarchs and Orchestras: Inside Luxembourg's Secretive Low-Tax 'Fortress of Art' Warehouse," *The Wall Street Journal,* 23 September 2015; Hili Perlson, "Switzerland Cracks Down on Art Market with Tighter Anti Money Laundering Laws," *The Art Newspaper,* 2 June 2015; Henri Neuendorf, "Switzerland's Tough New Stance on Freeports Will Shake the Art World," *The Art Newspaper,* 19 November 2015; Patricia Pearce, "Swiss Crack Down on Illegal Freeport Holdings," *Newsmax,* 28 December 2015.

[5] Art. 641, para. 2 of the Schweizerisches Zivilgesetzbuch (Swiss Civil Code).

[6] Schweizerische Eidgenossenschaft (Swiss Federal Council), *Bundesblatt* 13, 9 April 2015, pp. 2892ff.

[7] 631.01 Zollverordnung, Art. 173a.

[8] Andrea Kucera, "Gemälde im Genfer Zollfreilager beschlagnahmt," *Neue Zürcher Zeitung* (Apr. 11, 2016).

[9] Marcus Woeller, "Grauzone zum Weißwaschen von Schwarzgeld?" *Die Welt,* 12 July 2015.

[10] EZV spokesperson Ludwig Karl, cited in "Gold und Silber in Schweizer Zolllagern ab 2016 nicht mehr anonym," Goldreporter, 8 December 2015.

[11] 631.01 Zollverordnung, Art. 184.

As is so often the case, though, implementation of the new law may prove problematic. It remains to be seen whether the EZV enforces these new requirements by effectively increasing security controls to confirm and monitor the contents and value of the crates as well as the names and addresses of the owners. Of particular interest is the revised law's expansion of the list of so-called "sensitive" goods that must be fully disclosed for insurance purposes (e.g., wine, cigars, motorcycles, automobiles, and furniture).[13] Karin Märki, a representative from the customs directorate in Bern, has stated that the government simply does not have the resources to monitor the freeports more than it already does.[14]

## NOW WHAT? THE TRANSITION PERIOD

The recent amendments to the Customs Ordinance have spelled out the regulations for goods newly entering and exiting Swiss freeports, but what will happen to current clients and their items already stored in freeport vaults? The Federal Council has declared that freeport users have exactly one calendar year from when the amendments entered into force to bring their holdings into conformity with the new regulations (thus, either to declare their goods officially "in transit" or to remove them from the freeports and submit them to customs duties).[15] Although customs officials have remained otherwise mum on their plans for implementing the amendments, freeport operators are taking even more extreme measures into their own hands to ensure that clients adhere to the new legal framework. David Hiler, the director of the Geneva Freeport, has already assembled a team of independent specialists to perform extra checks on the goods stored there, with an eye towards rooting out antiquities taken from Syria and other war zones in the Middle East.[16] Needless to say, such stringent measures are unlikely to please many current clients.

While Switzerland has made these changes in anticipation of stronger international regulations to combat trafficking and money laundering worldwide,[17] freeports in other countries have given no indication of subjecting their users to the same standards. Thus, with these new amendments, the Swiss Federal Council has made a bold move, risking the loss of income from well-heeled clients and overturning a long tradition of secrecy in exchange for transparency. It is not yet clear whether their gamble will succeed.

**— Jennifer A. Morris**
Art Law Intern, IFAR
and **S.F.**

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[12] 631.01 Zollverordnung, Arts. 154-7.

[13] 631.01 Zollverordnung, Art. 178a.

[14] Karin Märki, as cited in Irene Grüter, "Raubkunst in Zollfreilagern: Behörden tun sich schwer," *Schweizer Radio und Fernsehen,* 14 April 2016: "Wir haben nicht die Ressourcen, um mehr zu kontrollieren."

[15] Schweizerische Eidgenossenschaft, "Neuerungen offene Zolllager (OZL) per 1. Januar 2016," 19 November 2015.

[16] Simon Bradley, "Experts Help Geneva Free Port Crack Down on Stolen Loot," *Swissinfo,* 8 June 2016.

[17] On September 29, 2016, UNESCO's Intergovernmental Committee for Promoting the Return of Cultural Property to its Countries of Origin or its Restitution in Case of Illicit Appropriation met to discuss the role freeports play in the illicit trafficking of cultural property. They have since released their report on the issue. See, http://www.unesco.org/new/fileadmin/MULTIMEDIA/HQ/CLT/pdf/Final_Secretariat_report_En.pdf

# FIRE DESTROYS PAINTINGS IN CUZCO CHURCH INVENTORIED BY IFAR IN 1983

Fire has destroyed much of the art in the exceptionally decorated 17th-century church of San Sebastián in Cuzco, Peru, including many works by Diego Quispe Tito, Peru's foremost indigenous colonial artist (**FIG. 1**). The Ministry of Culture reports that the fire, which started in the early hours of September 16, destroyed the principal altar of the church and 23 works (**FIG. 2**), but that 109 works were rescued with the help of the community.

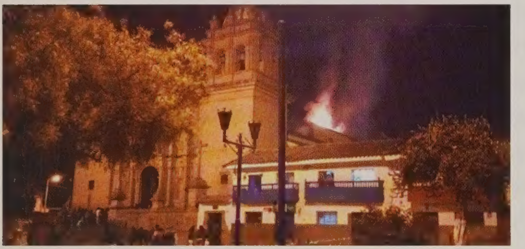
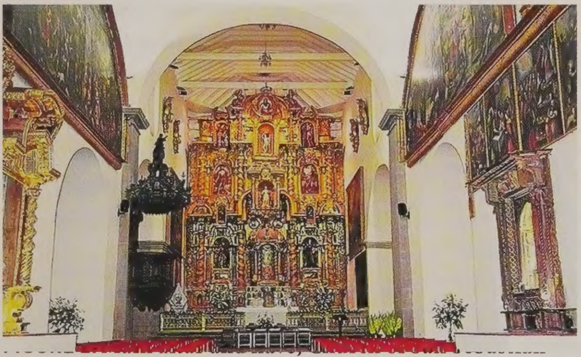


**FIGURE 1.** Church of San Sebastián, Cuzco in flames on September 16, 2016.



*before* the fire. Photo: *Diario Correo.*

The blaze was apparently caused by an electrical short circuit, and could not be extinguished for five hours for lack of water – local hydrants were not turned on until two hours later. A police investigation is under way to address the possibility of arson concealing theft of some of the art works. The Ministry is taking charge of the church and vows to restore the structure and its art, but there is no way to recover the treasures that have been lost (**FIGS. 3–6**).

The church had just had a major renovation in 2013 costing $1.5 million, including smoke detectors, motion sensors, and emergency lighting. Many of the sculptures and paintings were restored at that time. The mayor of Cuzco has now announced a partnership with the Banco de Crédito del Peru to help pay for this reconstruction and restoration, assisted by tax incentives — "obras por impuesto" — undertaken under the aegis of the Ministry of Culture. The community will be contributing tools, materials and manpower, with the first priority being to repair the

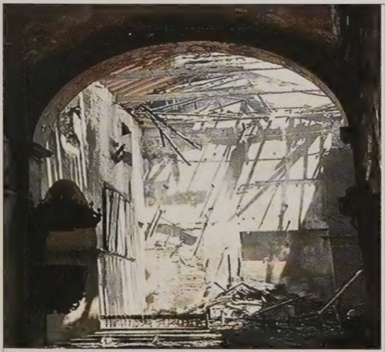
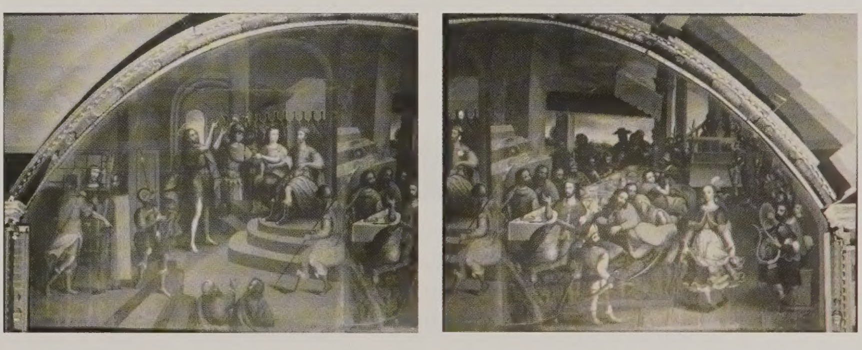
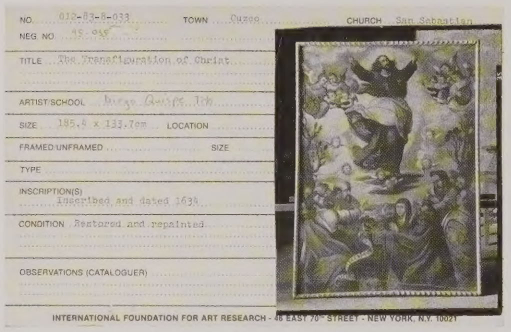


**FIGURE 3.** Main altar *after* the fire. Photo: *Diario Correo.*



**FIGURES 4A AND 4B.** IFAR Inventory Images of (**A**) (**LEFT**) DIEGO QUISPE TITO., *St. John the Baptist before Herod;* (**B**) (**RIGHT**) *Dance of Salome* (shown fully clothed), 1663. Oil on canvas, San Sebastián, Cuzco (presumed destroyed).

roof, as the rainy season is about to start in the mountains. The planned initiative will include an inspection of all churches containing cultural patrimony for fire and other security hazards.



NO. 012-83-8-033 TOWN Cuzco CHURCH San Sebastian
NEG. NO. 45-035
TITLE The Transfiguration of Christ
ARTIST/SCHOOL Diego Quispe Tito
SIZE 185.4 x 133.7cm LOCATION
FRAMED/UNFRAMED SIZE
TYPE
INSCRIPTION(S) Inscribed and dated 1634
CONDITION Restored and repainted
OBSERVATIONS (CATALOGUER)
INTERNATIONAL FOUNDATION FOR ART RESEARCH - 46 EAST 70TH STREET - NEW YORK, N.Y. 10021

**FIGURE 5.** IFAR Cuzco Inventory Card of 1983 showing the photo of the *Transfiguration of Christ* by Diego Quispe Tito, 1634, oil on canvas, (73 x 52 ½ inches), Church of San Sebastian, Cuzco (status after the fire as yet unknown).

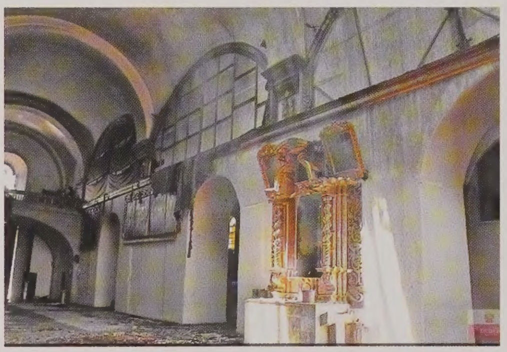


**FIGURE 6.** View of the nave toward the entrance of the church after the fire.

San Sebastián was one of the churches inventoried by IFAR as part of a larger initiative in 1983 and 1984 to inventory more than two thousand at-risk artworks in churches in Cuzco and the surrounding areas.[1] In August 1983 the IFAR cataloguers identified 126 paintings in San Sebastián, and photographed 23, including 11 half-lunettes (five and a half of six enormous diptychs, principally depicting the life of John the Baptist **(FIGS. 4 A & 4B)**, and a *Transfiguration of Christ* **(FIG. 5)**) by Quispe Tito. An additional 7 paintings were photographed in the main altar and 8 others elsewhere in the church. We were not able to obtain a list of the works destroyed and recovered by publication time, but expect that all the paintings embedded in the main altar and the huge diptychs that hung in the arches above the nave were lost **(FIG. 6)**.

Electrical fires are too common a cause for loss of artistic monuments; Lima lost its Municipal Theatre that way in 1998; and deficient water and other public services heighten the risk for art. Let's hope that this sad event spurs better protection for Peru's irreplaceable heritage. And may it also help improve the administration of justice in cases of art theft and loss: the Ministry of Culture is catching the wave of concern to propose that specialized prosecutors and courts be established to respond more efficiently, and give higher priority, to cultural patrimony cases. As noted in the referenced article of 2013, this is a needed change.

**—Frederic J. Truslow**

Consultant for IFAR's Cuzco Database; retired attorney for the government of Peru in the 1980s and 1990s

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[1] See Frederic J. Truslow, "The IFAR Inventory of Cuzco Churches and its Lessons," *IFAR Journal*, Vol. 14, nos. 1&2 (2013).

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## LETTERS TO THE EDITOR

REMINDER

**"Letters to the Editor" are welcome in *IFAR Journal*. Please keep letters brief. We reserve the right to edit for length. All letters must be signed. Please fax or mail letters to:**

**Dr. Sharon Flescher, Editor-in-Chief, *IFAR Journal***

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## TWO BILLS AFFECTING RESTITUTION CLAIMS MOVE FORWARD IN CONGRESS

### FULL SENATE TO VOTE ON BOTH "IMMUNITY CLARIFICATION ACT" AND "HEAR ACT"

In what may be more than mere coincidence, on September 15, 2016, the Senate Judiciary Committee unanimously approved two bills impacting restitution claims for artwork misappropriated during the Nazi era (1933-1945). Their passage represents a rare instance of bi-partisanship, as each bill garnered more than a dozen Senate co-sponsors, including many prominent Senators from both sides of the aisle (9 of whom signed on to both). One, for example, was sponsored by Republican stalwart Orrin Hatch of Utah and co-sponsored by liberal Democrat Dianne Feinstein, among others, while the other was spearheaded by the unlikely duo of Ted Cruz (R-Texas) and Chuck Schumer (D-NY). Both bills are now headed for a full-Senate vote after the November elections.

### CLARIFICATION ACT

The bill sponsored by Senator Hatch, the Foreign Cultural Exchange Jurisdictional Immunity Clarification Act ("Immunity Clarification Act") (S. 3155), is designed to amend the Foreign Sovereign Immunity Act (FSIA) so as to clarify a discrepancy between it and another law, the Immunity from Judicial Seizure Statute (IFSA). As previously discussed in the *IFAR Journal* (see, e.g., Vol. 15, no. 2, 2014), the House of Representatives has passed this bill three times, most recently in 2015, only to see it stall in the Senate Judiciary Committee, never making it to the Senate floor. Apparently, the third time was the charm.

The FSIA (28 U.S.C. §§ 1602-1607), which effectively prevents foreign governments or their representatives from being sued in the United States, contains an exception that permits lawsuits to go forward if they concern property alleged to have been taken "in violation of international law" *and* the foreign sovereign is engaged in "commercial activity" (i.e., does business) in the United States. This exception has served as the basis for several lawsuits in the U.S. by heirs seeking to recover looted art in the collections of foreign museums.

Unfortunately, the FSIA exception conflicts with the IFSA (22 U.S.C. § 2459), which was enacted in 1965 specifically to protect artwork loaned by foreign museums to American museums for temporary exhibitions. Under the IFSA, if a U.S. institution wishes to display a certain work from a foreign museum and requests, and is granted, protection for that work by the State Department, the work will be safe from seizure.

The conflict became apparent after a 2007 ruling by the District Court for the District of Columbia in the case of *Malewicz v. City of Amsterdam* said that an Amsterdam museum's loan of 14 paintings by Russian artist Kazimir Malevich (or "Malewicz") to two U.S. museums was sufficient, *in itself*, to constitute commercial activity. Therefore, Malevich's heirs could sue the Dutch government in the U.S. under the FSIA exception – despite the fact that the loaned paintings had been granted immunity from seizure under the IFSA and were, in fact, returned to Amsterdam.

Although the *Malevich (Malewicz)* case was the *only* instance in which this apparent discrepancy was invoked, the Immunity Clarification Act is designed to preclude a repeat of the *Malevich* decision in another court. The current bill explicitly states that the loan of a work of art to a U.S. institution does not, *by itself,* constitute "commercial activity." There is, however, a carve out for Holocaust-era looted works. The bill contains an exception denying immunity to works of art expropriated by the German government and its Allies during the Nazi era. An additional exception permits the U.S. to seize "culturally significant works" confiscated, after 1900, by foreign governments from "members of targeted group[s]."

The bill is strongly supported by the Association of Art Museum Directors (AAMD), which argued the need to assuage the concerns of foreign countries wary of lending artworks to American museums since the *Malevich* decision because of their uncertainty as to whether or not the FSIA would fully protect them from claimants.

Opponents of the bill, however, contend that the Nazi-era exclusion is too narrow, as it only applies to works misappropriated by governments, ignoring the thousands of works acquired by individuals simply acting for personal gain. Others object to the exception for works confiscated from (un-named) "targeted groups," viewing it as a concession to Russia, since artwork seized and nationalized after the Russian Revolution was not taken from any specific "targeted group."[1]

Nevertheless, the Judiciary Committee passed the Immunity Clarification Act unanimously, without amendments, and sent it to the full Senate for a floor vote.

## HEAR ACT

The other bill passed by the Senate Judiciary Committee on September 15, 2016 was the Holocaust Expropriated Art Recovery Act ("HEAR Act") (S. 2763), co-sponsored by Senators Cruz and Schumer, and discussed in the last issue of the *IFAR Journal.* The HEAR Act drew a great deal of media attention this June owing to the appearance of Academy award-winning actress Helen Mirren and philanthropist Ronald Lauder testifying in its support at a Judiciary Committee hearing.

The HEAR Act, which is scheduled to sunset in 2026, would create a single, uniform federal statute of limitations period of six years for claims of Nazi-era misappropriation, running from the time the claimant discovered the location of a looted work *and* knew he had a potential ownership interest.

Previous attempts by individual states, such as California, to create separate statutes of limitations specifically for Holocaust claims have been struck down by the courts on federal preemption grounds. Therefore, the limitations periods for recovering property, which vary from state-to-state, apply to all claimants, including those seeking to recover Holocaust-looted property. The HEAR Act would resolve this issue, as all Nazi-era claims would be subject to the same statute of limitations period, regardless of where the claimant resides.

While beneficial to claimants in most of the U.S., a new six-year national statute of limitations for Nazi-era claims is a potential loss to claimants in New York, where the current three-year limitations period does not begin to run until the current possessor refuses a demand for return of a work ("demand and refusal rule"). Under the HEAR Act, however, a New York claimant would have to file suit within six years of discovering that he/she has a claim and the identity of the possessor. But, to address this, claims not yet initiated at the time of enactment, or for which the limitations period after refusal has not expired, would start the six-year limitations period from the date of the enactment of the law.

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[1] Claims for works nationalized during the Russian Revolution, have never fared well in U.S. courts due to the Act of State Doctrine. See, for example, *Stroganoff-Scherbatoff v. Weldon,* 420 F. Supp. 18 (S.D.N.Y. 1976).

As with the Immunity Clarification Act, the Judiciary Committee unanimously approved the HEAR Act at its September 15, 2016 meeting and sent it to the full Senate for a floor vote, also expected by the end of 2016.

Unlike the Immunity Clarification Act, however, the Judiciary Committee significantly amended the HEAR Act before passing it, effectively narrowing the bill's scope and applicability. These changes included the reinstating of several time-based defenses (such as estoppel and laches) that had been barred by the earlier version; as well as dropping the earlier bill's provision allowing claimants to re-file claims that had been "previously dismissed" solely due to "the passage of time," such as the expiration of statutes of limitations. The types of artwork covered by the bill were, however, greatly expanded to include objects such as musical instruments, books, and even photographs.

### THE HOUSE

On September 22, 2016, only one week after the Senate Judiciary Committee passed the amended HEAR Act, a bi-partisan group of Congressmen, led by Representatives Bob Goodlatte (R-VA) and Jerrold Nadler (D-NY), introduced an identical version of the amended bill in the House of Representatives. It was promptly sent to the House Judiciary Committee for consideration. As in the Senate, the bill must first be approved by the Judiciary Committee before it can be presented to the full House for a floor vote.

However, the fact that the House took up the bill so quickly and did not change a word of the Senate's text is a strong indication that the HEAR Act will have little trouble getting through the House Judiciary Committee.

— **Nicholas Dietz**
Legal Research Associate, IFAR
and **S.F.**

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## TOUGH NEW YORK IVORY LAW PUT TO THE TEST

In September, in one of the first major criminal cases involving New York's 2014 expanded restrictions on the sale of ivory, State authorities recently arrested three men for selling ivory without a license and seized 126 ivory objects valued at $4.5 million.

Brothers Irving and Samuel Morano, the owners of Metropolitan Fine Arts and Antiques (MFAA) on West 57th Street in Manhattan, had been licensed to sell works made of ivory for years under New York's earlier legislation. The 2014 amendment to the New York State Environmental Conservation Law, however, requires prospective sellers to obtain a license for each work being sold and licenses can only be issued for works at least 100 years old *and* comprised of less than 20% ivory. An exception exists for ivory in musical instruments created before 1975.[1]

As the Moranos could not meet the new standards, which in many respects are stricter than the federal requirements, they continued to operate their business, now "without a license" (i.e., individual

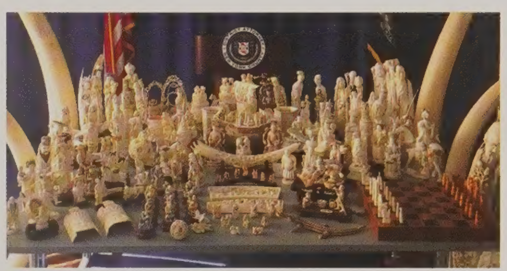

**FIGURE 1. The New York County District Attorney's Office displays some of the objects seized from a Manhattan antiques store pursuant to New York State's ivory restrictions.**

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[1] For more about New York's ivory restrictions, as well as the federal restrictions, see "What the Art World Needs to Know About the Ivory Ban," *IFAR Journal*, Vol. 17, no. 1 (2016) pp. 14-41.

licenses for each ivory object). In late 2015 – less than a year and a half after the New York State ivory law went into effect – undercover agents from the New York Department of Environmental Conservation purchased a statuette, purportedly made from the ivory of the long-extinct wooly mammoth, from MFAA salesman Victor Zilberman, for $2,000. (Although the statuette was actually made from elephant ivory, this was irrelevant because both mammoth ivory and elephant ivory are restricted under the 2014 New York State law.) After confirming that the statuette was made of ivory, the agents obtained a search warrant for the MFAA building in December 2015 and discovered the trove of 126 ivory objects.

Police arrested the Moranos and Zilberman on September 22, 2016, charging each with two felony counts of "illegal commercialization of wildlife," i.e., selling and attempting to sell ivory without a license. All three pleaded not guilty and, as of this writing, are being tried together in New York County Supreme Court.[2]

**— N.D.**

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[2] *New York v. Morano*, No. 02669-2016 (N.Y. Sup. Ct. *filed* Sept. 22, 2016).

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## KAPOOR REDUX

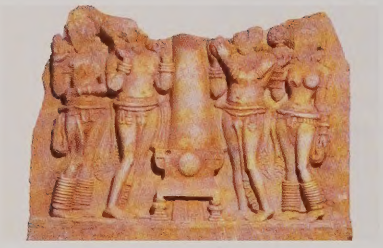

**FIGURE 1. Sculptural relief of *Worshippers of the Buddha* (3rd Century) from Andra Pradesh, India. Purchased from Kapoor by the National Gallery of Australia in 2005. Returned to India in 2016.**

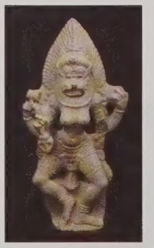

**FIGURE 2. Statue of the goddess Pratyangira (12th Century) from Tamil Nadu, India. Purchased from Kapoor by the National Gallery of Australia in 2005. Returned to India in 2016.**

In the continued fallout from the indictments (in both the U.S. and India) against international art dealer Subhash Kapoor on charges of art looting, a story covered extensively in the *IFAR Journal*[1], the National Gallery of Australia (NGA) has just repatriated to India two additional works that it acquired from Kapoor.

The two works, returned in a ceremony in Canberra on September 19, are a 3rd century sculptural relief showing the *Worshippers of the Buddha* (**FIG. 1**), which was purchased by the museum for $595,000 USD in 2005, and a 12th century statue of the goddess Pratyangira (**FIG. 2**), purchased for $247,500 USD, also in 2005. The former was removed from the southern Indian state of Andra Pradesh; the latter from Kapoor's most frequent target, the neighboring state of Tamil Nadu. The museum's investigation showed that the two pieces were still in India after the date that the dealer-supplied provenance indicated they had left the country, suggesting that they were illegally exported.

The NGA has been conducting an internal review of the mainly Indian objects it purchased from Kapoor over the years, concluding, initially, that 11 of the acquired works had problematic provenances and were possibly looted or illegally exported. The first of these to be returned to India was a 12th century bronze statue of the Dancing Shiva, purchased from Kapoor in 2008 for 4.2 million USD. That piece was returned in 2014. The return of the two works in September leaves 8 additional works still under investigation.

**— N.D.**

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[1] See, Nicholas Dietz, "The Case Against Kapoor," *IFAR Journal*, Vol. 16, no. 3 (2016), pp. 3-7.

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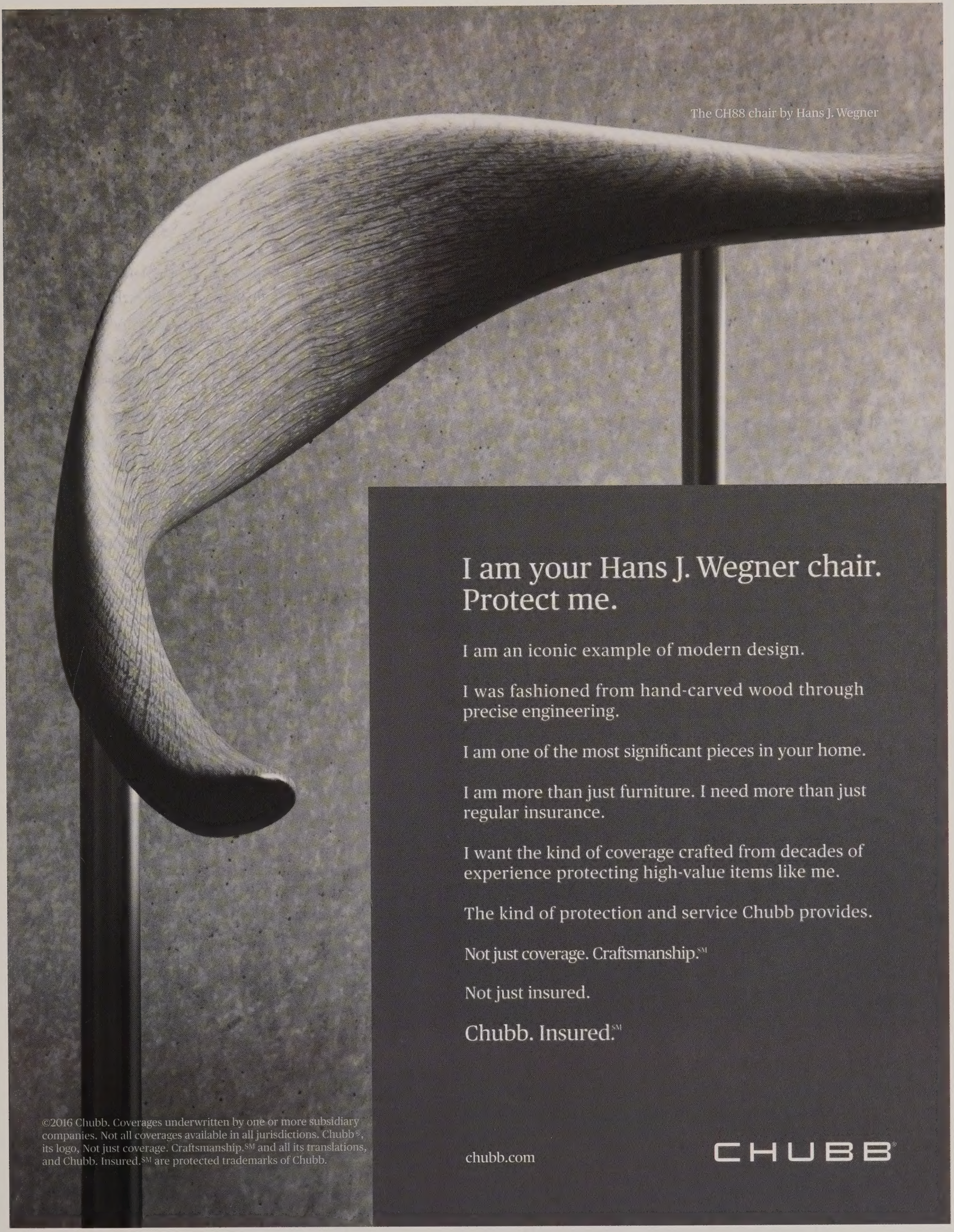

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# WILL THIRD VISIT TO NINTH CIRCUIT BE DÉJÀ VU ALL OVER AGAIN FOR NORTON SIMON MUSEUM?

THOMAS R. KLINE*

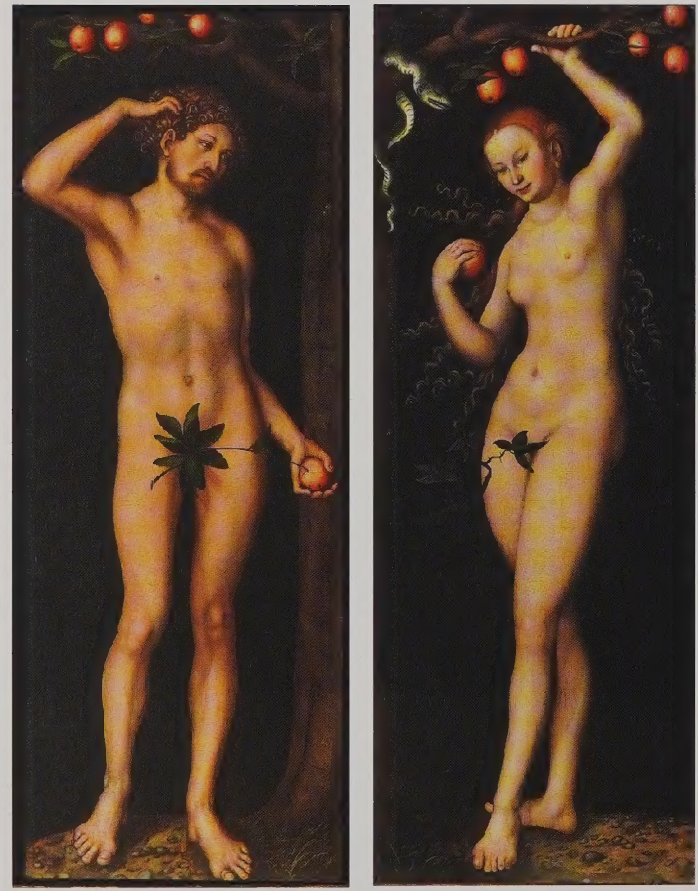

**FIGURE 1.** *Lucas Cranach the Elder, Adam* and *Eve,* c. 1530. Both, oil on panel, 75 x 27 ½ in. Currently in the collection of the Norton Simon Museum, Pasadena, but claimed by Marei von Saher, heir of Jacques Goudstikker.

The storied and soon-to-be-legendary Holocaust art recovery lawsuit – brought by Marei von Saher against the Norton Simon Museum of Art at Pasadena over twin paintings *Adam* and *Eve* by Lucas Cranach the Elder – has been dismissed for a third time in a narrow and technical decision by the U.S. District Court for the Central District of California.[1] The case will, therefore, be making its third trip to the U.S. Court of Appeals for the Ninth Circuit. Reversal and remand, which were the result of the two previous appeals by von Saher, seem at least more likely than not to be repeated.

As has been discussed previously in this Journal,[2] the case concerns a claim by Marei von Saher, sole heir of renowned Dutch art dealer Jacques Goudstikker, to recover two Cranachs which the Goudstikker Firm had sold to Nazis under pressure during the German occupation of the Netherlands. After World War II, the Allies returned the paintings to the Dutch who did not restitute them to the Goudstikker heirs. Rather, since the Goudstikker heirs failed to claim the Cranachs under the procedures available post-War in The Netherlands, the

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[*] Thomas R. Kline, Esq., is an art law attorney and a Partner at Cultural Heritage Partners, PLLC in Washington DC.

[1] *Marei von Saher v. Norton Simon Museum of Art at Pasadena,* Civ. Act. No. CV 07-2866-JFW (C.D. Calif. August 9, 2016), *appeal filed, Marei von Saher v. Norton Simon Museum of Art at Pasadena and Norton Simon Foundation,* No. 16-56308 (9th Cir. Sept. 9, 2016). *("von Saher 5").*

[2] *See IFAR Journal,* Vol. 10, no. 2, 2008, pp. 21-32; Vol. 11, no. 2, 2009, pp. 10-11; Vol. 13, nos. 1&2, 2012, pp. 8-9; Vol. 15, no. 2, 2014, pp. 23-28; Vol. 16, nos. 1&2, 2015, pp. 16-19.

Dutch took possession and control of the paintings and transferred them in 1966 to Prince George Stroganoff-Scherbatoff, an American naval officer who was heir to the aristocratic Stroganoff art collection, from which he believed the works had been confiscated during the Russian revolution. He, in turn, sold the paintings in 1970-71 to the Norton Simon, where they remain today.

When von Saher located the Cranachs at the Norton Simon and made claim, the parties tried to negotiate an amicable resolution. Negotiations broke down in 2007, and von Saher filed suit to recover the Cranachs.

The case was previously decided twice by the federal district court in California, each time in favor of the Norton Simon; the Ninth Circuit reversed each decision and remanded the case to the district court. Von Saher is appealing the district court's August decision to reject her claim for the third time, so the case will be going back to the Ninth Circuit again on appeal.

The district court's decision relies exclusively on Dutch law with virtually no reference to U.S. legal principles that have guided most Holocaust/World War II art restitution cases. The district court ruled this time that von Saher's claim must fail because her predecessors-in-interest made an educated and informed decision not to pursue these paintings after the War, thus waiving the claim and surrendering title to the Dutch government.[3]

If the court is correct, an election not to pursue a known and available right would be troubling in our legal system and would require detailed analysis under applicable U.S. law to see if a waiver had occurred. The court, however, analyzed the case under the very strict and legalistic Dutch post-War Royal Decrees — decrees that have now been discredited in The Netherlands — leading to a problematic and unsettling result.

## BACKGROUND OF THE GOUDSTIKKER STORY

One of the first to flee Nazi Germany's invasion of The Netherlands in May 1940, eminent Dutch art dealer Jacques Goudstikker left behind some 1,200 artworks in his home country. Jacques, however, did not even make it as far as England. He fell to his death down an open hatch while onboard the ship that was supposed to deliver him to safety. His wife Desi and one-year-old son Edo managed to escape to the U.S., but Jacques' mother, left behind, and his former colleagues also still in The Netherlands, were forced to deal with the devil in the form of Alois Miedl, notorious henchman for high-level Nazi leader and art thief Hermann Goering ("I intend to plunder and to do it thoroughly"[4]); Miedl took over the Goudstikker Firm, running it for his own and his master's benefit throughout the occupation.

While Miedl and Goering drained the Goudstikker Firm assets, the Nazis committed countless similar depredations in occupied lands. As a result, the governments-in-exile of various occupied countries (including Poland, The Netherlands and Czechoslovakia), along with the Allied nations, issued the London Declaration warning that they "reserved their rights" to revisit the lawfulness of such transactions after the Nazis' self-indulgent rampage ended.[5] Other restitution efforts, such as the now-famed Monuments Men, returned looted artworks to the countries from which they were taken with at least the notion, if not always the explicit direction, that the artworks be restituted to the victims of Nazism.

The Dutch, however, set short statutes of limitations and established other technical rules after the War that they now recognize to have been "legalistic, bureaucratic, cold and often even callous."[6]

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[3] *Id.* at 10.

[4] William L. Shirer, Ron Rosenbaum, *The Rise and Fall of the Third Reich: A History of Nazi Germany,* (New York: Simon & Shuster, 2011), p. 942.

[5] Inter-Allied Declaration against Acts of Dispossession committed in Territories under Enemy Occupation and Control, January 5, 1943, http://uscbs.org/assets/inter-allied-declaration.pdf.

[6] *Von Saher* 5 p. 8 *quoting* Ekkart Committee Report, 2001.

For example, many nations misunderstood the nature of coerced sales and sales under duress that Jews had been forced to make, with the Dutch viewing even transactions with the dreaded art looting task force of chief Nazi ideologue Alfred Rosenberg (Einsatzstab Reichsleiter Rosenberg or "ERR") as voluntary. The Dutch post-War government decided that "sales made in 1941 and in the first quarter of 1942 could not have been forced sales."[7] Even in later occupation-era transactions, the claimant still had to prove direct or indirect coercion or force by the buyer, not just the special circumstances of the occupation.[8]

Immediately post-War, the Dutch did not restitute works to Jacques' successors, Desi and Edo. Rather, *via* three Royal Decrees, discussed exhaustively by the district court, the Dutch set up a complicated claims process governed by a strict interpretation of what constituted a forced sale.

The district court considered that, at the urging of her legal and financial advisors, Desi made a calculated, tactical decision not to pursue certain remedies available under the post-War decrees in The Netherlands, including the claim for return of these paintings, while pursuing other claims.[9] The district court concluded, in particular, that Desi's decision not to go after the Cranachs seemed to be based on advice that *Adam* and *Eve* could be difficult to sell and that accepting restitution would mean that the firm would have to repay the Dutch for funds received from Goering in the forced sale transaction.[10] Von Saher's justification for Desi's failure to make such a claim does not appear in the decision.

In the absence of a timely claim, the Dutch government took possession and control of the Cranachs and, in 1966, transferred *Adam* and *Eve* (along with another work) to Stroganoff-Scherbatoff in exchange for the waiver of certain claims against a Rembrandt painting and payment to the Dutch State of 60,000 guilders. Stroganoff-Scherbatoff, as already noted, later sold the Cranachs to Norton Simon. Desi and Edo are now deceased. Von Saher is Edo's widow (and the mother of Jacques' grandchildren), and has been pursuing Goudstikker claims as Jacques' sole heir.

The 1998 Washington Conference on Holocaust Assets generated the Washington Conference Principles calling for the prompt, just and fair — not legalistic — resolution of claims based on Nazi art looting.[11] In 2002, the Dutch followed the Washington Conference Principles by instituting a new "lenient," "liberal," and "more generous art restitutions policy"[12] for considering claims on paintings returned to The Netherlands after the War and retained in the Dutch national collection. New claims can now be made on artwork not restituted after the War, and review will be based on ethical/moral considerations, not just legal ones. Under this new policy, transactions by Dutch Jews beginning May 10, 1940, the first day of the German invasion, are viewed as forced, unless there is evidence to the contrary.[13] Under the new restitution policy, which did away with reliance on a "purely legal approach,"[14] in 2006 the Dutch returned to von Saher about 200 works which were not restituted after the War, but whose loss, although not legally a confiscation under Dutch law, "can be considered involuntary under the current restitution policy."[15]

Von Saher's case against the Norton Simon thus concerns two paintings taken by the Nazis in forced sales that were returned to The Netherlands after the War but not restituted to the Goudstikker heirs. Instead, they were transferred to a third party, Stroganoff-Scherbatoff, by the Dutch and found their way to the Norton Simon. Since they are no longer under the control of the Dutch, they could not be restituted to von Saher under the new Dutch policy which the district court declined to apply.[16] In response to an inquiry from the Norton Simon, in fact, the Dutch government refrained from expressing any opinion about ownership of the Cranachs.[17]

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[7] Dutch Restitutions Committee, Ekkart Committee Recommendations, "Forced Sale" (http://www.restitutiecommissie.nl/en/4_forced_sale.html).

[8] *Id.*

[9] *Von Saher* 5, pp. 4-6.

[10] *Von Saher* 5, p. 5.

[11] *http://www.state.gov/p/eur/rt/hlcst/122038.htm* (Washington Conference Principles on Nazi-Confiscated Art).

[12] Dutch Restitutions Committee, "The Restitutions Committee's history in brief." http://www.restitutiecommissie.nl/en/the_restitutions_committees_history_in_brief.html.

[13] *Id.*

[14] *Von Saher 5*, p. 8.

[15] Dutch Restitutions Committee, Recommendation Regarding the Application by Amsterdamse Negotiatie Compagnie NV in Liquidation for the Restitution of 267 Works of Art from the Dutch National Art Collection (http://www.restitutiecommissie.nl/en/recommendations/recommendation_115.html); *see Von Saher* 5, p. 8.

## THE TWO PRIOR APPEALS

In its first decision in 2010, the district court dismissed von Saher's case as time-barred, finding the California statute of limitations for Holocaust-related property claims to be unconstitutional as a violation of the foreign affairs doctrine.[18] The Ninth Circuit U.S. Court of Appeals agreed with the district court's analysis, but nonetheless remanded the case to the district court because von Saher's claim might be timely under some other California statute of limitations.[19]

By the time of the second go-round, the California legislature had created a broader and therefore constitutional statute of limitations pertaining to all property recovery claims, removing any question about the timeliness of von Saher's claim. Nevertheless, the district court dismissed the case in 2014 on the grounds that von Saher's claims, if not the California statute, conflicted with U.S. restitution policy because the Dutch had resolved the case and the U.S. government honors post-War restitution decisions.[20] Again, the court of appeals reversed, concluding that *Adam* and *Eve* were never the subject of post-War restitution proceedings in The Netherlands and, therefore, von Saher's claims based on forced sales "are in concert with" U.S. restitution policy as embodied in the Washington Principles and the Terezin Declaration.[21]

## THE DISTRICT COURT'S THIRD DISMISSAL

On this remand, the Norton Simon presented the district court with numerous arguments to support its claim to title, such as the Act of State Doctrine. The district court, however, ruled only on the argument that the Norton Simon held title due to the heirs' decision not to perfect their claim after the War, even though the Goudstikker Firm was unquestionably coerced into selling the works. The district court held that the Dutch state acquired title, then lawfully transferred title to Stroganoff-Scherbatoff who sold the work to the Norton Simon, thus conveying good title to the museum.

### Dutch Post-War Decrees

The district court rests its decision on three interlocking post-War royal decrees governing restitution of property claimed by victims of the Nazis. Under these decrees, Dutch citizens had until 1951 to make their claims. While reasonable people can disagree about a 6-year period for claims, it seems unconscionably short considering the overwhelming loss of life and of records, and the additional burdens survivors faced in putting their lives back together. Although not directly relevant to *von Saher v. Norton Simon,* Congress is today considering a bill that would create a federal statute of limitations for Holocaust-related claims, extending the permissible time period to 6 years after the date of actual discovery of the whereabouts of the object. Congress is apparently animated to act due to the unusual circumstances of the losses, which included genocide of the theft victims, destruction of records coupled with post-War injustices followed by sealing of records.[22]

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[16] *Von Saher 5,* p. 17.

[17] *Von Saher 5,* p. 8.

[18] *See Von Saher v. Norton Simon Museum of Art at Pasadena,* 592 F.3d 954, 959-60 (9th Cir. 2010).

[19] *Id.* at 968.

[20] *Von Saher v. Norton Simon Museum of Art at Pasadena,* 754 F.3d 712, 719 (9th Cir. 2014); *see http://www.state.gov/p/eur/rt/hlcst/122038.htm* (Washington Conference Principles on Nazi-Confiscated Art); http://www.holocausteraassets.eu/program/conference-proceedings/declarations/ (Holocaust Era Assets Conference, Terezin Declaration).

[21] *Von Saher,* 754 F.3d at 723.

[22] Holocaust Expropriated Art Recovery Act of 2016 (S. 2763), available at https://www.congress.gov/bill/114th-congress/senate-bill/2763; https://judiciary.house.gov/press-release/goodlatte-nadler-introduce-legislation-help-recover-art-confiscated-holocaust/ (introduced in House of Representatives).

The district court also ignores a contrary finding by the Dutch Restitutions Committee that the Goudstikker heirs "could have had various reasons at the time for deciding against seeking restoration of rights that in no way suggest the surrender of ownership rights to the Goering collection." [23]

The district court's decision has a natural tendency to grate on the American consciousness, since we are deeply steeped in the rule that a thief does not acquire and cannot pass good title, even to a good faith purchaser.[24] At the same time, Americans do respect the notion that one can make an election not to pursue an available remedy, and must then accept the consequences. Hence, what is troubling about the decision is not necessarily the result, but rather the district court's strict and exclusive reliance on the arcane and discredited Dutch post-War laws without (1) a detailed choice of law analysis; (2) consideration of Holocaust-related factors that might have contributed to the heirs' decision not to pursue the claim; or (3) reference to contemporary U.S. restitution decisions in similar cases.[25]

## Choice of Dutch Law

The district court provides scant justification for its exclusive reliance on Dutch law, saying only that the district court agrees with the Norton Simon's analysis and von Saher did not object.[26] Applying Dutch law puts the district court out of step with the most comparable recent decision that rejected the application of Swiss law to a property transfer occurring there in the post-War era. In *Bakalar v. Vavra,*[27] which also made multiple trips to a federal court of appeals, the U.S. District Court for the Southern District of New York applied the law of Switzerland to a transfer of property occurring in that country, analyzing the transaction under the principle that the law of the place of the challenged transaction controls.[28] On appeal, the U.S. Court of Appeals for the Second Circuit reversed; using the more modern interest analysis, it held that New York had a far greater interest in seeing its laws applied to a painting found within the jurisdiction than did Switzerland.[29]

> "The district court's decision has a natural tendency to grate on the American consciousness, since we are deeply steeped in the rule that a thief does not acquire and cannot pass good title, even to a good faith purchaser. At the same time, Americans do respect the notion that one can make an election not to pursue an available remedy, and must then accept the consequences."

In the von Saher case, the district court noted that The Netherlands said that it would offer no opinion about these paintings because they are not in The Netherlands and the dispute is between private parties.[30] Yet, the district court's analysis makes the Dutch interest paramount.[31] So, almost twenty years after the 1998 Washington Conference on Holocaust-Era Assets and the wide acceptance of a more liberal approach to restitution of Nazi-looted art, the district court acknowledges that it is following the Dutch post-War "strictly legal" approach, thus ignoring the policy and moral considerations that the Dutch now take into account under the Washington Principles and the Terezin Declaration.[32]

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[23] Dutch Restitutions Committee, Recommendation Regarding the Application by Amsterdamse Negotiatie Compagnie NV in Liquidation for the Restitution of 267 Works of Art from the Dutch National Art Collection (http://www.restitutiecommissie.nl/en/recommendations/recommendation_115.html).

[24] *Kunstsammlungen zu Weimar v. Elicofon,* 678 F.2d 1150, 1160 (2d Cir. 1982).

[25] A small but potentially significant point: the district court notes that under Dutch law a forced sale is considered voidable, meaning the transaction is considered valid until challenged and nullified under the Royal Decrees. *Von Saher 5,* p. 11 & n. 6. In the U.S., we regard forced sales as straight up acts of looting or stealing which are void *ab initio. Vineberg v. Bissonnette,* 529 F. Supp. 300, 307-08, *aff'd,* 548 F.3d 50 (1st Cir. 2008).

[26] *Von Saher 5,* p.10 n.5.

[27] *Bakalar v. Vavra,* 619 F.3d 136 (2d Cir. 2010), *reversing* 550 F. Supp. 2d 548 (S.D.N.Y. 2008).

[28] *Id.*

[29] *Id.* ("By contrast, the resolution of an ownership dispute in the Drawing between parties who otherwise have no connection to Switzerland does not implicate any Swiss interest simply because the Drawing passed through there"). A contrasting (and also long-running) case is *Cassirer v. Thyssen-Bornemisza Collection Foundation,* Case No. CV 05-3459-JFW-E (C.D. Cal. June 4, 2015). In Cassirer, the district court applied Spanish — not California — law of adverse possession/prescription in dismissing a Holocaust-related claim to a painting. The court reasoned that Spain had the most significant relationship to the painting, which was located in Spain and possessed by a Spanish party, and the allegedly unlawful taking did not occur in California.

[30] *Von Saher 5,* pp. 8-9.

[31] *Id.*

Viewed through the lens of the Washington Principles and the new Dutch approach, the Goudstikker Firm and family rank squarely amongst the collectors and dealers most put upon by the rapacious legions of Nazi art looters, as well as one of the most ill-served by the lack of understanding and legalisms of post-War procedures.

By basing its decision entirely on post-War decrees that the Dutch now recognize to have been "legalistic," the district court never considers whether Desi's decision not to make a claim on *Adam* and *Eve* could be justified under the current ethics-based Dutch restitution principles or the possibly more forgiving American waiver standards. The district court has left this analysis for the appeal.

## CONCLUSION

What, then, does *von Saher v. Norton Simon* tell us about the current level of contentiousness in Holocaust-related art claims? Some claims are being quietly settled; Christie's, for example, has handled over 200 claims in the past decade.[33] Likewise, over the past five years the Museum of Fine Arts, Boston, has settled Holocaust-related looting claims with the heirs of Jakob and Rosa Oppenheimer *(Four Tapestries from the Life of Urban VIII Series)* and with the heirs and estate of Walter Westfeld (Eglon van der Neer, *Portrait of a Man and Woman in an Interior)* (http://www.mfa.org/collections/provenance/ownership-resolutions). Von Saher, herself, has settled fifty claims.

"The parties tried to settle this case and, when such efforts fail, it is impossible to know if one party is more at fault."

On the other hand, cases like *von Saher* (individual heir vs. American museum), *Cassirer v. Thyssen-Bornemisza* (individual heirs vs. Spanish museum) and *Bakalar v. Vavra* (individual heirs vs. individual collector) have taken or are taking more than one trip to a federal appellate court. These cases at least suggest that there is a hardening of attitudes and an increasing level of disputatiousness among some museums and collectors undermining the promise of the Washington Principles and Terezin Declaration that litigation can be avoided or minimized through the amicable and expeditious search for a "just and fair solution" to claims for unrestituted Nazi-looted art.[34] The parties tried to settle this case and, when such efforts fail, it is impossible to know if one party is more at fault. However, the fact that von Saher and the Norton Simon, after ten years of litigation, have not been able to avoid or contain this dumpster fire of a litigation suggests that many parties still lack the tools or the will to approach Holocaust-related art restitution cases rationally and in a cost-effective and humane manner.

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[32] *See http://www.state.gov/p/eur/rt/hlcst/122038.htm* (Washington Conference Principles on Nazi-Confiscated Art); http://www.holocausteraassets.eu/program/conference-proceedings/declarations/ (Holocaust Era Assets Conference, Terezin Declaration).

[33] Monica Dugot, Senior Vice President and International Director of Restitution, Christie's, Congressional Panel Testimony before the Senate Judiciary Committee on June 7, 2016. https://www.judiciary.senate.gov/imo/media/doc/06-07-16%20Dugot%20Testimony1.pdf.

[34] *See http://www.state.gov/p/eur/rt/hlcst/122038.htm* (Washington Conference Principles on Nazi-Confiscated Art); http://www.holocausteraassets.eu/program/conference-proceedings/declarations/ (Holocaust Era Assets Conference, Terezin Declaration).

# THE TANGLED CASE OF PICASSO'S *HEAD OF A YOUNG WOMAN* (1906)

## THE TENSION BETWEEN CULTURAL HERITAGE LAWS AND PRIVATE PROPERTY

### RAFAEL MATEU DE ROS[*]

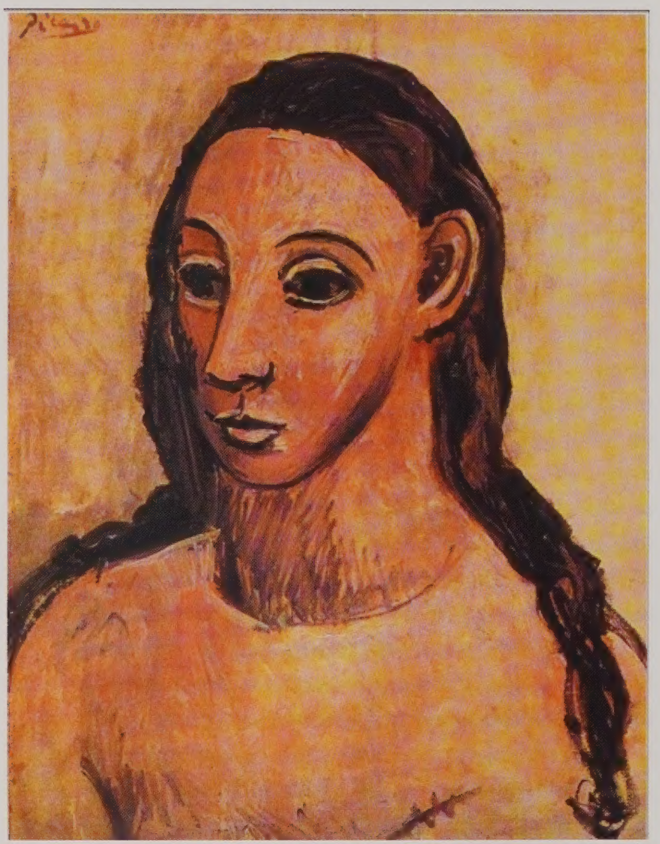

**FIGURE 1. PABLO PICASSO, *Head of a Young Woman,*** 1906. Oil on canvas, 54 x 42 cms. © 2016 Estate of Pablo Picasso / ARS NY.

## INTRODUCTION

Pablo Picasso's oil painting *Head of a Young Woman* **(FIG. 1)** was executed in Paris in 1906 and belongs to the artist's Pre-Cubist period. It is a very well-known painting among scholars and Picasso experts worldwide and is considered by many to be one of the preparatory works for *Les Demoiselles d'Avignon,* (1907), the founding painting of the Cubist movement and one of the masterpieces at The Museum of Modern Art, New York (MoMA). (Here, *Head of a Young Woman* will be referred to by its full name or as the "Head.")

The painting was acquired by its current owner, the Spanish banker Jaime Botín, from the Marlborough Gallery, London in 1977. It bore a distinguished provenance:

- Paul Guillaume, Paris;
- Xavier Lasbordes, Paris; [M. Knoedler & Co., New York, sold June 17, 1963 to];
- Norton Simon, Los Angeles; [Parke-Bernet Galleries, Inc. New York, May 5, 1971, no. 70 – unsold]
- Marlborough Galleries, London; acquired November 28, 1973

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[*] Rafael Mateu de Ros, Ph.D. in Law, is an attorney in Madrid and represents Mr. Botín in this dispute with the Spanish authorities.

**EDITOR'S NOTE:** IFAR does not normally publish articles by attorneys currently involved in the legal case being discussed. We made an exception because the subject matter is germane to our broader interest in cultural property laws and the author is the most knowledgeable person to discuss the Spanish law as it applies to this well-publicized and potentially significant case.

## THE LAWSUIT

Like many countries, Spain has enacted laws to protect its cultural heritage; its heritage law goes back thirty years, to 1985. In December 2012, that law[1] was invoked to deny an export permit for *Head of a Young Woman,* which was requested by Christie's Auction House in Spain in anticipation of a London sale. The application placed the painting's value at 26.2 million euros.

The painting, however, has little connection to Spanish heritage. Although Picasso was Spanish, virtually his entire career was based in France. Moreover, the "Head" was not painted in Spain; the work never stayed in Spain on a permanent basis; nor was it ever part of a public or private collection in Spain. The painting has been aboard a British-registered vessel, the "Adix," since 1989 **(FIG. 2)**. The vessel and the other relevant artworks on board belong to Jaime Botín, who, admittedly, is a Spanish citizen. None of these circumstances, in this author's opinion, are sufficient grounds to declare the painting a Spanish national treasure.

Nevertheless, the Spanish Ministry of Culture is seeking to include the painting in the list of artworks important to Spanish heritage. This has triggered legal battles in both Spain and France.

A judgment issued by the Spanish National Court (*Audiencia Nacional*) in May 2015 held that despite the fact that the "Adix" is a British private yacht, the 1985 Law on Spanish Historical Heritage applies if the yacht is moored in a Spanish port, regardless of the length of the stay. This judgment rendered the 2012 export ban on the painting ordered by the Spanish Ministry of Culture legal.

The judgment has been appealed before the Spanish Supreme Court *(Tribunal Supremo)* on several grounds, particularly on the core argument that the Spanish heritage law contradicts European treaties on the free movement of goods, which is regulated under the terms of Articles 26 and 28 to 37 of the Treaty on the Functioning of the European Union (TFEU). This is the first time the Supreme Court is being asked to consider this contradiction. None of the European High Courts has made a decision on a similar issue to date. The Supreme Court ruling could be challenged in the European Court of Justice or the European Court of Human Rights.

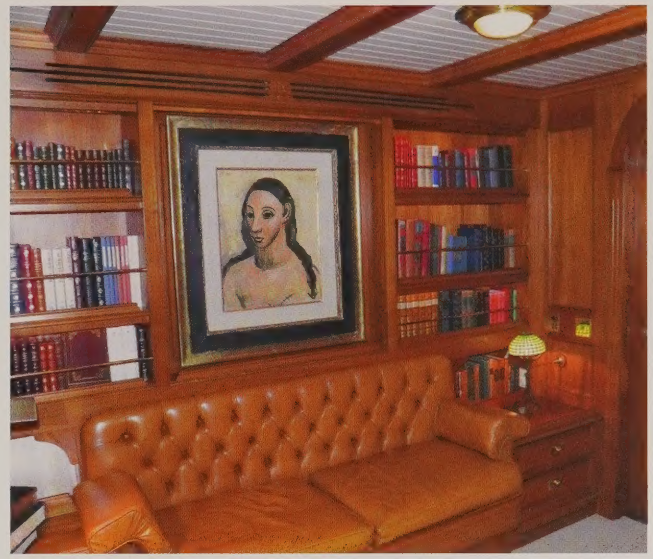

**FIGURE 2.** ***Head of a Young Woman*** shown on the schooner Adix.

"... The Spanish Government made use of the moment that the Adix was moored at the Port of Calvi (Corsica, France) last summer, on July 31, 2015, to order French customs authorities to seize the painting and authorize its transfer to Spain."

Despite the facts above, the Spanish Government made use of the moment that the Adix was moored at the Port of Calvi (Corsica, France) last summer, on July 31, 2015, to order French customs authorities to seize the painting and authorize its transfer to Spain. The Spanish government asserted that the painting was being moved to Switzerland for sale. The transfer was effective on August 2015 when the painting was taken by the Spanish police to Madrid's Reina Sofía Museum, where it remains in storage for the duration of the legal proceedings. The procedures of the Spanish Ministry have been questioned, since, in the ordinary course of affairs, the owner, rather than contending with a mandatory seizure, would be asked to deposit the artwork in storage or simply wait for the Supreme Court ruling.

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[1] Law No. 16-1985 of 1985, Law on Spanish Historical Heritage (LEY 16/1985, de 25 de junio, del Patrimonio Histórico Español (BOE de 29 de junio de 1985). The full text of the law in Spanish and English is available on IFAR's Art Law & Cultural Property Database at www.ifar.org/art_law.php.

The Court of Cassation of Paris, the highest court in France, has recently (Arrêt of May 19th 2016) decided to void the sentence issued by the lower court, the Bastia (Corsica) Court of Appeals, related to the seizure and the subsequent delivery of the painting by the French authorities to the Spanish police in August 2015. Now the case will be reheard by a different French court, the Court of Aix-en-Provence, with a decision currently expected on November 30.

The seizure has been a hot-button issue in the international art media since August 2015. Doreen Carvajal in *The New York Times,* for example, (October 2015) cited both Olivier Picasso, the artist's grandson, and John Richardson, the Picasso scholar/biographer, as denying the Spanish "significance" of the painting.[2]

Media in Spain, France and elsewhere have also been regularly covering the affair, which has become a "battleground case" where the interest of owners – and, ultimately, their property rights — have come into conflict with the – supposed – public interest.

Given the May 2016 Court of Cassation ruling in Paris, the case is on hold pending the decision of the Spanish Supreme Court, which is expected at the end of this year.

## THE SPANISH LAW: POLITICAL AND LEGAL NATIONALISM

The Law on Spanish Historical Heritage was inspired by ultra protectionist principles forged in the post-Spanish Civil War era. The underlying spirit of political and legal nationalism was fueled by Dictator Francisco Franco and prevailed until his death in 1974. Despite the restoration of Spanish democracy in 1978, the regime of hegemonic political parties, conservative and socialist, which have switched positions up until the June 2016 elections, has inherited numerous problems from the Franco regime, such as a powerful public administration – with more than three million civil servants; a partially privatized corporate public sector; one of the most suffocating tax systems of the European Union (EU); and a civil society unable to control and challenge the State.

The 1985 Spanish heritage law states that any cultural work more than 100 years old constitutes a national treasure, regardless of its value, author and purpose, provided that it is located within the national territory. In the Picasso case (the "Head" was painted in 1906), authorities are seeking to enforce the relevant Act for art on board a private vessel with a foreign flag on the grounds that the vessel was moored at a Spanish port or sailed through territorial waters of Spain. The same could theoretically apply in the case of works located on an aircraft at a Spanish airport. If so, dire consequences may await us. Tourism, including luxury tourism, is the main contributor to the Spanish economy. Every year, particularly in summer, the ports of Mallorca, Ibiza, Barcelona, Valencia, Marbella, and the Canary Islands, among many others, are crowded with luxury yachts, which may have on board several artworks potentially subject to the Law on Spanish Historical and Artistic Heritage unbeknownst to their owners. Should the Spanish Government aim to board these vessels in search of these artworks with the intention to issue an export ban on them and seize them, which is unthinkable in any other democratic country, our economy and prestige could be badly damaged.

The Law on Spanish Historical Heritage – the most restrictive in the EU along with the Italian legislation (enacted 1939) – is as leaky as a sieve:

- It fails to define the works that are part of Spanish historical and artistic heritage. It lacks a set classification of artworks as national treasures as required by Directive 2014/60/EU,

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[2] Doreen Carvajal, "Private Property or Patrimony? The Fight Over a Picasso," NYT, C1, October 10, 2015, and online: http://www.nytimes.com/2015/10/10/arts/design/private-property-or-patrimony-the-fight-over-a-picasso.html?_r=2 .

Art. 2, which clearly states that works should be *"classified or defined."* The Ministry is entitled to classify an artwork as a cultural work and exclude it from legal trade at any time upon request *ad cautelam* of an export permit or upon any other circumstance.

- It fails to regulate national and regional authorities, which gives rise to numerous conflicts between the State and the autonomous communities, and among the latter. For instance, the relevant autonomous community can refuse to protect a given work on which the State has imposed an export ban. In these circumstances, the export ban is of no effect.
- It fails to obligate the Administration to examine artworks before classifying them – even when an export ban is to be issued, which has already led to numerous cases of misclassification.
- It fails to give owners the opportunity to challenge or raise arguments against the expert report presented by the Administration in support of the export ban.
- The expert report is not conducted by an independent expert or institution, but rather by a government civil servant of any of the National Museums appointed by the Administration.
- There is not a single guide allowing owners and prospective purchasers to find out in advance whether a given artwork is likely to be barred from export. The Administration refuses to post the applicable decision criteria on its websites and, in fact, recent contradictory decisions made by the Administration are giving rise to a high degree of legal uncertainty.
- The State can exercise a preferential purchase right with regard to the artworks that are or may be part of the Spanish historical and artistic heritage when they are about to be exported or sold in Spain. The purchase price in this case is based on the value shown in the application form, which may be different from the market value. But what makes the situation even more serious is that the purchase right does not expire even if the State fails to exercise it in the six-month period established to that effect. Moreover, the State may exercise the right again if the owner decides to sell the artwork, which means that the Spanish State can prohibit the sale of an artwork abroad without acquiring it or otherwise classifying it as protected, overriding any of the owner's rights save that of keeping the artwork in his or her possession forever, or selling it within the national territory. This goes against the public interest and nothing of the sort occurs in any other EU country.
- Last but not least, the Spanish system is almost devoid of tax or financial incentives for artistic patronage.

The legal backwardness with regard to these issues is one of the reasons for the weakness of the art market in Spain. Spanish owners import few artworks of significance, and when they wish to do so, they have to turn to large international auctions. Ironically, this regulatory severity seems to foster illicit trafficking of artworks.

> "What makes the situation even more serious is that the purchase right does not expire even if the State fails to exercise it in the six-month period established to that effect."

## IS THERE AN ARTISTIC CONNECTION TO, AND EXCEPTIONAL SIGNIFICANCE FOR, SPAIN?

The Picasso case challenges us to establish the artistic connection to Spain of a painting that lacks direct and clear links to the country and has never been part of any Spanish private or public collection.

In principle, cultural works – paintings, sculptures, documents, etc. – more than 100 years old may be part of the Spanish historical and artistic heritage. Of course, age cannot be the sole criterion. The artwork should also be/ have been permanently or regularly located in the relevant national territory. Third, and crucially, the artwork should have historical and artistic significance based on its author, its time of creation or its features. If this kind of connection with the country does not exist, the artwork, in my opinion, should not be classified as part of the country's heritage. Finally, a fourth requirement is needed: that the classification be effected by a legal and firm act approved by the competent authority and free of any legal challenge.

*Head of a Young Woman* does not comply with the aforesaid requirements, save its age.

The third condition may be controversial, especially when dealing with relatively recent artworks (age is determined as of the date of creation, rather than as of the date of the author's death, as is the case in copyright law), and even more so when the artwork has always been outside the national territory. Should countries be entitled to claim the artworks of their nationals that are scattered all over the world? Should an artist's nationality be relevant if the work lacks physical and historical connection to the country?

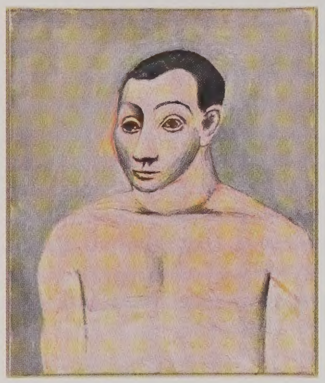

**FIGURE 3. PABLO PICASSO, *Self-Portrait,*** Autumn, 1906. Oil on canvas, 65 x 54 cm. Musée Picasso, Paris. © 2016 Estate of Pablo Picasso / ARS NY.

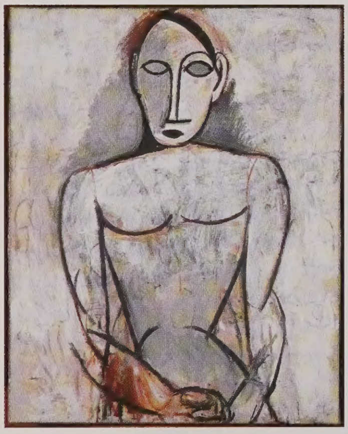

**FIGURE 4. PABLO PICASSO, *Woman with Clasped Hands,*** (Study for *Demoiselles d'Avignon*), Spring, 1907. Oil on canvas, 90.5 x 71.5 cm. Musée Picasso, Paris. © 2016 Estate of Pablo Picasso / ARS NY.

The 2012 government-ordered expert report on the Picasso "Head"[3] conducted by Madrid's Reina Sofía Museum (MNCARS for its Spanish acronym), an important state-owned museum of modern and contemporary art, provides the following arguments:

- "There is not a similar painting in Spain," nor even in the Musée Picasso in Paris. This statement is not accurate, however, as there are actually two similar paintings in the Musée Picasso: the *Self-Portrait* **(FIG. 3)** of 1906 and the celebrated *Woman with Clasped Hands* **(FIG. 4),** of 1907."[4]
- Also incorrect is the argument that Picasso is poorly represented in Spain. There are 106 Picassos at the MNCARS alone, among which 26 are oil paintings, including the emblematic masterpiece *Guernica* (1937). The Barcelona Picasso Museum has 39 of his oil paintings and hundreds of his other works. The Málaga Picasso Museum shows the entire inheritance of one of the artist's grandchildren.[5]

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[3] December 16, 2012 report: "Informe Consultivo con Destino a la Junta de Calificación, Valoración y Exportación de Bienes del Patrimonio Histórico Español del Ministerio de Educación, Cultura y Deporte.

[4] Nor is it accurate to say that there isn't a similar painting in Spain. Another Picasso oil painting, dated c. 1907 and measuring 55 x 46 cm, was recorded in the Registry of Cultural Works of the Ministry of Culture on September 24, 1990, with code no. I-M 01-0001691 under a similar title, "Head of a Woman". Cf. www.mecd.gob.es/bienesmuebles, accessed on March 23, 2016.

[5] Agreement between the Málaga Picasso Museum and the Foundation Almine y Bernard Ruiz-Picasso [FABA]. (Bernard is the son of Christine, who was the second wife of Paulo, the artist's oldest son.)

## Timeline

| Autumn 1906 | 1977 | December 5, 2012 | December 13, 2012 | December 16, 2012 | December 19, 2012 | December 28, 2012 |
|---|---|---|---|---|---|---|
| *Head of a Young Woman* painted by Pablo Picasso in Paris. | *Head of a Young Woman* purchased by Jaime Botín from the Marlborough Gallery, London. | Export request for *Head of a Young Woman* filed by Christie's, Spain in anticipation of a sale in London. | Committee of Qualification, Valuation and Exportation of Goods of Historic Spanish Patrimony denies Christie's request. | Expert Report on *Head of a Young Woman* issued by the Reina Sofía Museum in Madrid, upon the request of the Minister of Education, Culture and Sport. | Export request denied by the Director General of Bellas Artes y Bienes Culturales. | Order by the Ministry of Education forbids the exportation of the Picasso "Head" as a protective measure |

- Picasso's work, fortunately, is widely represented in Spain, and the reason there aren't even more Picassos in Spain is that he did not wish it so. Also, the Spanish State has not bothered to acquire his works, which have been auctioned publicly for many years. The fact that the *Guernica* is in Madrid and that his legacy is mainly in Barcelona and Málaga is only due to the painter's and his heirs' generosity.
- The "Spanishness" of the painting. The expert report holds that "the painting is framed in the context of the so-called Gósol period, one of the artist's briefest periods since it lasted for only a few months." Short indeed: the report acknowledges that Picasso stayed at Gósol — a small village in the Spanish Pyrenees — barely from June to August 1906. His stay was actually shorter, ten weeks from June 2nd or 3rd to August 15, 1906, as is reported in the artist's biographies, and afterwards he returned to Paris, where he had moved definitively in the year 1904 (after spending time there previously). He went back to Spain only six times between 1904 and 1934, and from that year until his death in 1973, he never returned to Spain. Many critics argue that the works executed by Picasso during autumn and winter 1906-1907 are noticeably different from those created during the Gósol period – although the stay in Gósol was an important transitional time – and that they are part of a later period of the artist's career.

  *Head of a Young Woman* was painted at the artist's studio in Montmartre, the Bateau-Lavoir, probably in November 1906. Gósol was by then far, far away. The presumed Spanishness of the artwork is unsustainable, even if the work had recently been located in Spain, which is not the case.
- The expert report makes a further reference to Picasso's connection to the "Spanish themes and customs (...) unanimously recognized by critics and experts," to the "Spanish roots" and to the period at hand in which "the influence of Iberian art is self-evident." These references to unanimous opinions and self-evident facts regarding the influence of Iberian art, which are not documented in the report, are overstatements that contradict the profuse literature on Picasso. Scholars, historians and critics generally agree on Picasso's cosmopolitan and innovative character; on the absence of Spanishness in his work (other than El Greco in his Blue Period and in *Les Demoiselles d'Avignon*, and Romanesque Catalan sculpture in his Proto-Cubist works); as well as the influence of the famed 19th-century French painters (especially Ingres and also the Impressionists and Post-Impressionists — Monet, Matisse and Gauguin — particularly in the Blue and Rose periods, and Cubist and Pre-Cubist period). Picasso represents the denial of any established cultural discourse or style.[6]
- The significance of Gósol on Picasso's artistic development is debatable,[7] and the influence of ancient Iberian art, if any, occurred after the

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[6] J.A.Gaya Nuño: *"El arte español en sus estilos y en sus formas"*, 1949; F. Calvo Serraller: *"La invención del arte español"*, 2014; Javier Portús: *"El concepto de pintura española. Historia de un problema"*, 2012. Experts agree in asserting that Spanish painting does not exist either as an aesthetic paradigm or as an artistic tradition. It is, however, a literary invention of the historiography and the cultural nationalism promoted during the Franco regime. The Gósol period is not even mentioned in the great collaborative book *Picasso and the Spanish Tradition,* 1996, by Jonathan Brown and Robert S. Lubar, et. al, although they do argue the importance of Spain throughout the artist's career. See also, *10 Picassos del Kuntsmuseum Basel en el Museo del Prado,* Exhibition catalogue, 2015 and *Picasso Sculpture,* MoMA, 2015.

[7] See J. Palau i Fabre, *Picasso por Picasso,* 1970, pp. 140 and following, where he says, referring to this period, that Picasso sees himself as a man of the land, with the characteristics of a simple peasant.

**July 26, 2013**
Resolution of the Ministry of Education rejects the appeal against the Order of December 28, 2012

**July 31, 2013**
Lawsuit filed in the Audiencia Nacional (National Court of Spain) against the July 26, 2013 Resolution

**May 2015**
Judgment issued by the National Court holding that Spain's 1985 cultural heritage law did apply to the Picasso "Head," thus rendering the 2012 export ban legal. The judgment has been appealed to the Spanish Supreme Court (decision expected late 2016).

**July 31, 2015**
French customs authorities, upon orders of the Spanish Government, seized the "Head" from the Adix, Mr. Botín's yacht, as it was moored in the Port of Calvi, Corsica.

**August 2015**
The "Head" was transferred by the Spanish police to the Reina Sofía Museum for storage pending resolution of the case.

**May 19, 2016**
Court of Cassation in Paris voided the sentence by the lower court in Corsica related to the seizure in Calvi. The case will be reheard in Aix-en-Provence, with a decision expected on November 30.

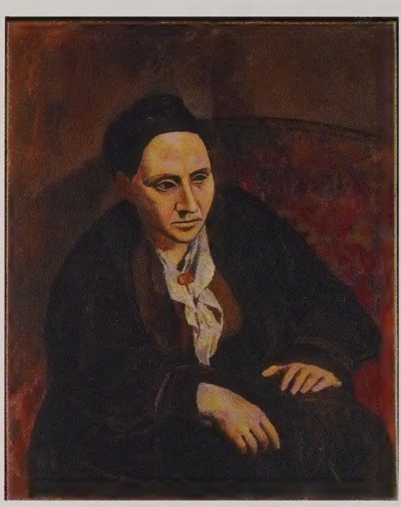

**FIGURE 5. PABLO PICASSO,** ***Portrait of Gertrude Stein,*** 1905-06. Oil on canvas, 100 x 81.3 cm. Metropolitan Museum of Art, New York. © 2016 Estate of Pablo Picasso / ARS NY.

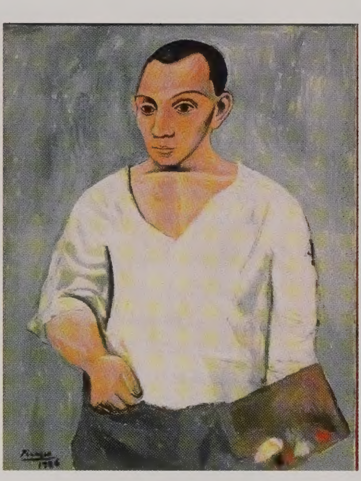

**FIGURE 6. PABLO PICASSO,** ***Self Portrait with Palette,*** Autumn, 1906. Oil on canvas, 92 x 73 cm. Musée Picasso, Paris. © 2016 Estate of Pablo Picasso / ARS NY.

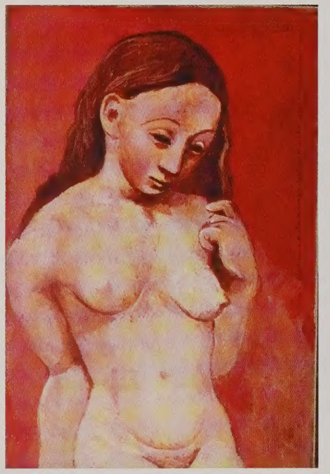

**FIGURE 7. PABLO PICASSO,** ***Nude on a Red Background,*** Autumn, 1906. Oil on canvas, 81 x 54 cm. Musée de l'Orangerie, Paris. © 2016 Estate of Pablo Picasso / ARS NY.

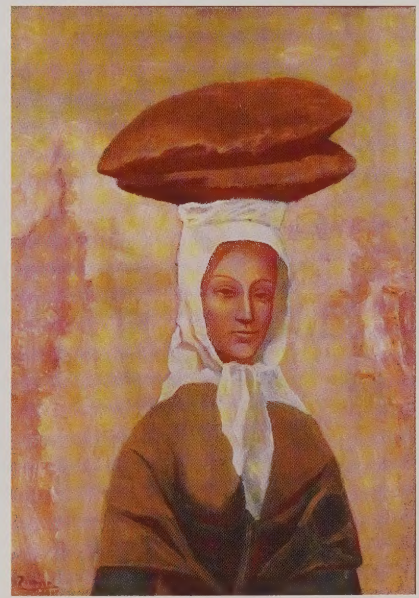

**FIGURE 8. PABLO PICASSO,** ***Woman with Loaves,*** Gósol, 1906. Oil on canvas, 99.5 x 69.9 cm. Philadelphia Museum of Art. © 2016 Estate of Pablo Picasso / ARS NY.

> artist returned to Paris – not at Gósol – with increased interest due to his Spanish origin, but not more than other instances of primitive art.[8]

The *Portrait of Gertrude Stein* (1905-06) **(FIG. 5)** is not influenced by ancient Iberian pieces, John Richardson asserted in *A Life of Picasso.*[9] The *Self-Portrait* previously mentioned and the *Self-Portrait with Palette* **(FIG. 6)** (both, Musée Picasso, autumn, 1906), *Woman with Clasped Hands* (spring, 1907), *Man, Woman and Child* (Kunstmuseum Basel, autumn 1906), *Seated Nude* (Art Gallery of Prague, autumn, 1906), or *Nude on a Red Background* (Musée de l'Orangerie, autumn 1906) **(FIG. 7),** some of them reported to be preparatory studies for *Les Demoiselles d'Avignon,* are other examples. This is the period in which *Head of a Young Woman* is created, a period always referred to by historians, critics and cataloguers as "Paris, fall, 1906" or "Paris, late 1906," distinct from the summer in Gósol.

Pre-Cubism was developing even before the Gósol summer. Some paintings created before Gósol bear an evident resemblance to the "Head," while Gósol paintings do not.

The most representative painting of the Gósol period, *Woman with Loaves* (Philadelphia Museum of Art, 1906) **(FIG. 8),** illustrates this statement. It has no stylistic connection with our painting. On the other hand, there are many examples of paintings started or created before Gósol in 1905 or at the beginning of 1906 that look like Jaime Botín´s painting, such as *La Coiffure* (Metropolitan Museum, New York, started spring 1906 and completed fall 1906) **(FIG. 9)** and *Boy Leading a Horse*

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[8] In the catalogue of the exhibition Colección del Museo Nacional Picasso MNCARS, 2008, p.29, Paloma Esteban states that Picasso discovered in Gósol *"Romanesque figures and Iberian statues,"* but, of course, there is no evidence of the existence of ancient Iberian sculptures in that small village. That "discovery" was probably made at the Trocadero Ethnographic Museum in Paris in early 1906. John Richardson in *A Life of Picasso* states that Picasso saw the Iberian heads at the Louvre in winter 1906 or after. See Richardson, Vol. I, p. 428. Some scholars say even later, in March 1907, when Picasso acquired some tiny Iberian sculptures for his private collection in Paris

[9] See, Richardson, *A Life of Picasso,* 1991, Vol. I, p. 456.

(MoMA, 1905-06) **(FIG. 10)**. The fact that the paradigms of Pre-Cubism are announced long before the painter´s stay at Gósol does not prevent some works of this period from having a connection with the artist's previous stages – the Blue and Rose periods — as is the case of *Les deux frères* (Kunstmuseum Basel, Gósol, 1906) **(FIG. 11)**.[10]

When juxtaposed, the ancient Iberian head exhibited in the MNCARS expert report **(FIG. 12)** and the disputed Picasso "Head" bear no resemblance at all. Nor does the ancient head resemble any of the pre- or post-Gósol artworks mentioned above, or, for that matter, any of the representative artworks of the Gósol period, such as *Woman with Loaves.*

The MNCARS expert report does not mention a single word on Picasso's Africanism at that time: the African masks that he saw in Paris, at Trocadero, in 1904 and later. Critics such as Alfred Barr [11] and John Berger,[12] as well as collective works at MoMA, the Met and National Gallery of Art, Washington,[13] have highlighted the exotic primitivism of Picasso's paintings in the years 1906 and 1907, as well as the influences of African masks and figures.[14] It is precisely in this utopian universe of multiple influences where *Les Demoiselles d'Avignon* has its roots.[15]

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[10] *See Los Picassos del Kuntsmuseum Basel,* op. cit.: *The Two Brothers,* Gósol, early summer 1906 and *Man, Woman and Child,* Paris, autumn 1906, pp. 62 and following.

[11] Alfred Barr, *Picasso, Fifty Years of His Art,* The Museum of Modern Art, 1946.

[12] John Berger, *The Success and Failure of Picasso,* 1965.

[13] Marilyn McCully, "*Picasso: The Early Years 1892-1906,*" Washington, DC, 1977.

[14] *Picassomania,* Catalogue Exhibition," Paris, Grand Palais, 2015-2016: "Les Demoiselles Africaines," pp. 92 and following.

[15] Many books, articles and exhibitions support that *Les Demoiselles d'Avignon* is connected to African and Oceanic primitive art, including the major exhibition on the origins of "Les Demoiselles d'Avignon" and African sculpture arranged by Tenerife Espacio de las Artes (TEA) and the Málaga Picasso Museum. Alfred Barr, the celebrated director of the MoMA, who purchased *Les Demoiselles d'Avignon* for the museum, highlighted in a well-known book, *Picasso, Fifty Years of his Art* (1946), that the painting had its roots in the art of the peoples of sub-Saharan Africa and in that of the Oceanic and Melanesian aborigines. Baldassari underlines the influence of fetishes brought by Matisse from Congo and found in Gauguin and Cézanne exhibitions, in his recent "Catalogue Chronology of the Musée Picasso in Paris" ("Coedition Museé national Picasso-Paris/Flammarion," 2015), which can also be found in the catalogue of the Museé d´Orsay entitled "Masks, from Carpeaux to Picasso," 2008-2009. See also, John Richardson's discussion of Picasso's denial of the African influence in *Les Demoiselles d'Avignon,* although the evidence indicates otherwise, in Richardson, op. cit., Vol II, pp. 24-27.

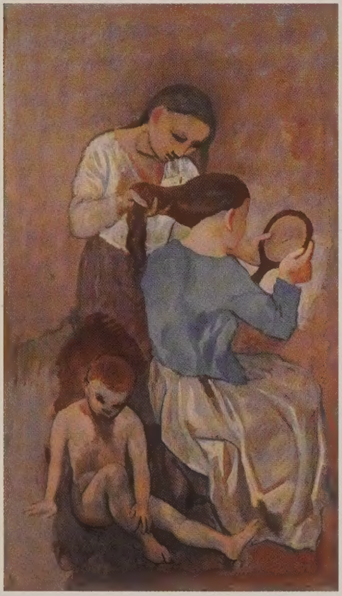

**FIGURE 9. PABLO PICASSO,** ***La Coiffure,*** 1906. Oil on canvas, 174.9 x 99.7. Metropolitan Museum of Art, New York. © 2016 Estate of Pablo Picasso / ARS NY.

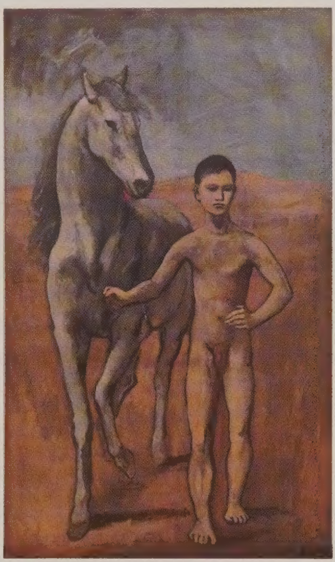

**FIGURE 10. PABLO PICASSO,** ***Boy Leading a Horse,*** 1905-06. Oil on canvas, 220.6 x 131.2 cm. Museum of Modern Art, New York. © 2016 Estate of Pablo Picasso / ARS NY.

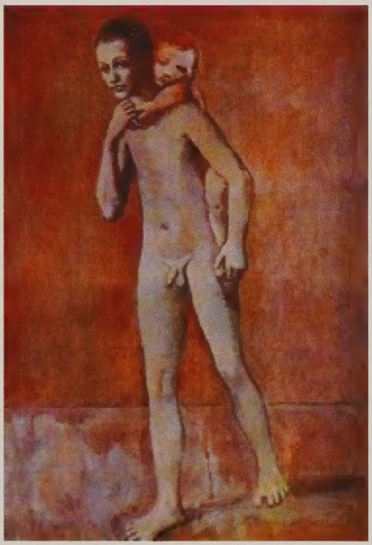

**FIGURE 11. PABLO PICASSO,** ***Les deux frères,*** Gósol, 1906. Oil on canvas, 142 x 97 cm. Kunstmuseum, Basel. © 2016 Estate of Pablo Picasso / ARS NY.

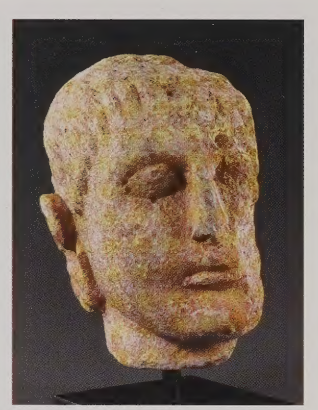

**FIGURE 12.** Archaic Iberian ***Head of Man*** from Cerro de los Santos. Limestone, 27 x 16.5 x 20 cm. 3rd Century BC. Coll. Musée Saint-Germain-en-Laye, France. Image included in the expert report produced by the Reina Sofía Museum, Madrid (MNCARS).

Finally, the influences during the course of Picasso's career were many and varied. Picasso painted *Head of a Young Woman* when he was 24, after his wonderful and highly valued Blue and Rose periods and shortly before conceiving two masterpieces that would change the course of 20th-century art and of art history forever: the *Portrait of Gertrude Stein* and *Les Demoiselles d'Avignon*.

The year 1906 is relevant in Picasso´s evolution, but not because of his summer at Gósol. 1906 marked, before and after Gósol, "the end of his naturalism and the expressive investigation of the Blue and Rose periods. His colors were becoming simplified, the modeling was hardening and becoming more sculptural. It marked the time of the intervention of the primitive arts and specifically of negro masks."[16] Many years later he would execute another revolutionary painting, the *Guernica,* and he would continue to create masterpieces for several decades. His short stay at Gósol is just another step further in the life of an international artist. Later on, Picasso would "quote" Velázquez, but also Poussin, Delacroix and Manet. Spanish people are justifiably proud of their fellow countryman Picasso, who preserved his Spanish nationality through thick and thin. There is no need to exaggerate the influence of Iberian art where it doesn't exist.

Should an artwork be declared part of a country's historical heritage on such fragile grounds? On the same grounds as those stated in the expert report, France, where the painting was executed and remained for years; the United States, where the painting also stayed and was exhibited for years; or even the Autonomous Government of Catalonia[17] could claim the painting as part of *their* cultural heritage.

With regard to the case of *Head of a Young Woman,* the most outstanding expert in Picasso's life and work, Sir John Richardson, has spoken out, as has the lawyer Mr. Olivier Picasso, Picasso's grandson, collector and expert, both of whom were quoted in the above-mentioned article in the *New York Times.* Richardson pointed out that the artwork "could not have been painted at Gósol" and Olivier Picasso, in turn, has stated he does not believe the painting has significance for Spain. "The reality," he said, "is that this painting was more influenced by African sculptures."[18]

The search for artworks that have been stolen, unlawfully expropriated, lost or damaged has a legitimate purpose and it is absolutely necessary, but States and their police authorities should always proceed in accordance to the rule of law. An artwork should not be sought or seized without clear evidence – as defined by the relevant administrative or legal authority – that it is part of the historical and artistic heritage of a given country. Furthermore, for retaining or recovering an artwork, the State should first prove that the piece has been unlawfully exported. Even in these circumstances, in the author's opinion, the State should only resort to the use of force or criminal prosecution in exceptional cases, once all means of solving the problem through civil procedures have been exhausted. In the case under consideration,

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[16] Musée de la Orangerie, *Catalogue of the Jean Walter and Paul Guillaume Collection,* 1987, p.160.

[17] Catalonia has its own law on Historical Heritage (Ley 9/1993, de 30 de septiembre, del Patrimonio Cultural Catalán). Gósol, as noted above, is a village located then and now in Catalonia. Some scholars have reported the influence on Picasso's "Head" of the *Virgin of Gósol,* a 12th-century Romanesque sculpture, which has no connection to ancient Iberian art. These include J. Palau i Fabre, in *Picasso Vivo. 1881-1907,* 1981. The Museu Nacional d´Art de Catalunya in Barcelona is preparing an exhibition on Picasso and Romanesque Art for late 2016.

[18] *Op. cit,* Carvajal, *NYT,* October 9, 2015. Olivier Widmaier Picasso (b. 1961) is the son of Maya, daughter of Pablo Picasso and Marie-Thérèse Walter (1909-1977), Picasso's partner between 1927 and 1936. He is the author of *Portraits of famille: Picasso,* 2003. His sister Diana Widmaier Picasso was the curator of the exhibition "Picassomania," *op. cit.*

Spanish authorities failed to follow the procedures established by the EU.[19]

Some pieces of art, either by their nature, age and the intense link with a particular country, are unquestionably part of a country's heritage. Take, for instance, ancient monuments, cathedrals, cloisters, medieval monasteries, Renaissance and Baroque artworks. It is over 19th- and 20th-century artworks that questions emerge. Regardless of their age, certain goods of a low-value nature will never be attributable to a country's heritage save in exceptional circumstances: 19th-century or older tools, furniture, tableware or cutlery. Canvases, sculptures, tapestry, bronzes and other artworks created in the last two hundred years are not a "natural" part of the historical heritage. Thus, governments need to provide evidence of an artwork's exceptional significance and connection to the country, all the more so if the artwork is a modern painting.

> "Should countries be entitled to claim the artworks of their nationals that are scattered all over the world? Should an artist's nationality be relevant if the work lacks physical and historical connection to the country?"

Legislation from various European countries and, particularly, the Spanish heritage law, continues to turn its back on the free movement of goods, despite this being a fundamental principle of the European Union. Besides the need to reform and update what many people view as obsolete legislation, such as the 1985 Spanish law, more and more authorities, institutions, collectors, and foundations are calling for a less restrictive movement of cultural goods, as is the case in the British and American markets, which, for this and for other reasons, lead the way in global cultural management.

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[19] European Directive 2014/60/UE, on May 15, 2014 on the return of cultural objects unlawfully removed from the territory of a Member State and amending Directive 93/7/CEE, on March 15th. The latter was incorporated into Spanish legislation through Act 36/1994, on December 23rd. These regulations establish a civil – rather than criminal – legal procedure for the return of cultural objects unlawfully exported.

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# 20/20 HINDSIGHT: LESSONS FROM THE KNOEDLER/ROSALES AFFAIR

An *IFAR Evening*, July 12, 2016

IFAR
INTERNATIONAL FOUNDATION FOR ART RESEARCH
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## EDITOR'S NOTE

One of the biggest art forgery scandals in recent years led to the downfall of the once-esteemed Knoedler Gallery and to both a highly publicized trial, *De Sole v. Knoedler,* in federal district court in New York and an ongoing criminal investigation. The trial raised questions about art world practices and ethics, revealing inherent weaknesses in a field where much is based on trust and reputation and people are often reluctant to speak out when they suspect a fake. In July 2016, IFAR organized an *IFAR Evening* at Scandinavia House in New York to discuss what, in hindsight, we can learn from this sad episode. IFAR's distinguished speakers, some of whom were involved in the case, addressed the subject from a variety of vantage points. It was a lively discussion. The sold-out program, sponsored in part by Chubb, was moderated by Patricia Cohen, the *New York Times* reporter who broke the story in 2011. Several other reporters in the audience later wrote about the program. Below are the edited talks and Q&A; a videotape of the program is posted on IFAR's website: www.ifar.org.

**MODERATOR**

**PATRICIA COHEN**
Reporter, *The New York Times*

**SPEAKERS (IN SEQUENCE)**

**JOHN CAHILL**
Partner, Cahill Partners LLP

**SHARON FLESCHER**
Executive Director, IFAR

**JAMES MARTIN**
President, Orion Analytical LLC

**ADAM SHEFFER**
President, Art Dealers Association of America (ADAA);
Partner, Cheim & Read

**ROBERT STORR**
Professor of Painting and Former Dean, Yale School of Art

# INTRODUCTION

## PATRICIA COHEN*

"It takes much more than a very good imitative artist, or even an outrageous con-man, to pull off something like this. It takes a village."

Let me first introduce our panelists, whom I also lovingly think of as my sources. First is John Cahill, an attorney who has handled four of the Knoedler cases for people who purchased artworks. He is a former Chairman of the Art Law Committee of the New York City Bar Association and has his own legal practice. Dr. Sharon Flescher, who follows him, is the Executive Director of IFAR and the Editor-in-Chief of the *IFAR Journal.* She has published and lectured extensively. James Martin is a conservation scientist who founded and heads his own firm, Orion Analytical, which played a crucial role in identifying the paintings as being forgeries. In fact, even before any cases were brought, Jamie was the first person to test one of the Robert Motherwell paintings and found that it was not authentic. Next is Adam Sheffer, a partner at Cheim & Read and President of the Art Dealer's Association of America. Robert Storr, who was for many years a curator at MoMA, just recently stepped down as Dean of the Yale School of Art, but is still a professor there. There is really no better group of people to tell you about the Knoedler/Rosales case.

One thing that struck me in covering this story over a number of years is that it takes much more than a very good imitative artist, or even an outrageous con-man, to pull off something like this. It takes a village. It was both with the witting help, and also sometimes the unwitting help, of a lot of people who really didn't know, but for a variety of reasons contributed in some way to making people think that these were authentic paintings. People who suspected something from the beginning were not able to say anything because they were fearful of being sued. Some of the foundations involved had legal representatives who told them not to say anything. There were others who were paid or got a commission from some of the works that were sold. And others, even if they weren't paid directly, were indirectly paid by Knoedler and were in their employ.

This is a case that you look at in retrospect and it seems impossible that it went on for as long as it did – 15 years – in the middle of the art world. Yet it did. It was all of these catch-22s. There were intervals when it seems that the truth should have come out, and didn't. So let us start with John Cahill, who is probably the best person to provide an overview.

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* Patricia Cohen has been a reporter at *The New York Times* since 1998. In December 2011, as an investigative reporter in the cultural department of the *Times*, she effectively broke the Knoedler/Rosales story and continued to cover it for years. She currently covers the national economy for the *Times*. Her prior journalistic credits include positions at *The Washington Post, Newsday,* and *Rolling Stone* magazine.

# AN OVERVIEW

## JOHN CAHILL*

“The important question that we want to answer here is, who takes responsibility?”

It is always a pleasure to be with IFAR, which is a great organization. My job is to present the entire history of the Knoedler/Rosales case – the facts and the law – in a few brief minutes. I am not providing legal advice. This isn’t the gospel according to me. Some of my comments are opinion; some are the facts.

The goal of this program, as IFAR explained, is *not* to engage in a festival of recrimination and blame, although that’s always fun and some of that might come out here or there, but to put the events in context, so that we can have a discussion about the lessons that were learned, and have a thought-provoking conversation.

Fakes and forgeries are not a new thing. They didn’t start with Knoedler. The Romans were doing it to the Greeks. There were fakes in the early twentieth century as well. In the 1920s, Sir Joseph Duveen called a painting a fake Leonardo, and got sued for it. Other people have gotten stung by fakes more recently. The actor Steve Martin, who is a serious art collector, bought *Landscape with Horses,* which was supposed to be by Heinrich Campendonk. It wasn’t. It was a fake made by Wolfgang Beltracchi. The important question that we want to answer here is, who takes responsibility? That’s my first bullet point, my first thought-provoking question. Steve Martin said, “Yes, I bought a fake.” In fact, he bought a couple of fakes. In an interview in *The New York Times,* he stated that he didn’t know what would happen. I think the gallery did cover him, but that is an issue.

A rogues gallery of forgers includes: Wolfgang Beltracchi, whom Orion Analytical was involved in unmasking, and who was the subject of a *60 Minutes* episode. Hans van Meegeren is my personal favorite. He said he hadn’t cooperated with the Nazis in selling them a Vermeer because he actually sold them a forgery. The most elegant forger, Elmer de Hory, has been in films. John Myatt was part of a scheme that faked provenance. We can add Ken Parenyi, who will feature again with one of the main, but little known, characters in the Knoedler story.

Finally, there is the main Knoedler forger, Pei-Shen Qian **(FIG. 1),** who created the dozens of works that were involved in the case, including the one on the stage behind me, which is owned by a collector who

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* John Cahill, Esq. is an art law attorney and the founding partner of Cahill Partners, LLP. He is a past Chair of the Art Law Committee of the New York City Bar Association. Mr. Cahill has represented several collectors in the Knoedler/Rosales cases, including *Howard, Cohen, Lagrange.*

**FIGURE 1.** Pei-Shen Qian, the Knoedler forger. Photo: *Bloomberg Business Week.*

**FIGURE 2.** José Carlos Bergantiños Díaz. Photo: *Bloomberg Business Week.*

**FIGURE 3.** Glafira Rosales. Photo © Yelena Tylkina.

acquired it as a Rothko, but it isn't. Qian apparently met José Carlos Bergantiños Díaz on the street **(FIG. 2).** Bergantiños, who was sometimes referred to as the husband, sometimes the boyfriend, of Glafira Rosales **(FIG. 3),** fled the country while Rosales pleaded guilty to a crime and is awaiting sentencing. He is in Spain, and wouldn't you know it, he got too sick to come back to the United States to answer federal charges against him. So he hasn't been extradited. But his brother, who was involved in laundering some of the proceeds of this fraud, *will* be coming back to the U.S.

Jaime Andrade, who had worked at Knoedler, introduced Glafira Rosales to Ann Freedman, the longtime president and director of the Knoedler Gallery **(FIG. 4).** Freedman was a very highly regarded gallery director. She started selling works at art fairs and privately that Rosales brought to her. It generated big profits. For example, one of my clients, John Howard, bought what was supposed to be a de Kooning painting for close to $4 million on a Wednesday, which Knoedler had bought the Tuesday before for $750,000 **(FIG. 5).** That is a substantial profit margin. The total revenue – not just from Knoedler; there was another dealer involved named Julian Weissman – was $80 million for these dozens of fakes. That figure comes from the federal indictment against Rosales *et al* **(FIG. 6).**[1]

So how did people start to find out about this? The Dedalus Foundation, which was established by the artist Robert Motherwell, had actually authenticated a work said to be by Motherwell that was sold by Julian Weissman. Killala Fine Art, Ltd., which later bought that work through the dealer Marc Blondeau, sued the Dedalus Foundation and Julian Weissman for having mistakenly authenticated the Motherwell.[2] The FBI then started investigating. That caused Michael Hammer, who owned the Knoedler Gallery, to take action.

The Knoedler Gallery was a very old gallery, established in the nineteenth century in New York. In the twentieth century, it was bought by the industrialist Armand Hammer. When Michael Hammer, his grandson, got wind of the FBI investigation, he stopped the sale of works that came from Rosales and from another fellow named Masaccio. But it was all done pretty quietly. Ann Freedman left the gallery, and Hammer refused to provide details. No one knew much about it. Meanwhile, the FBI was quietly investigating. Hammer, who was eventually sued but the

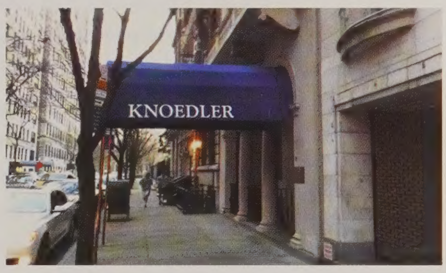

**FIGURE 4.** Knoedler Gallery.

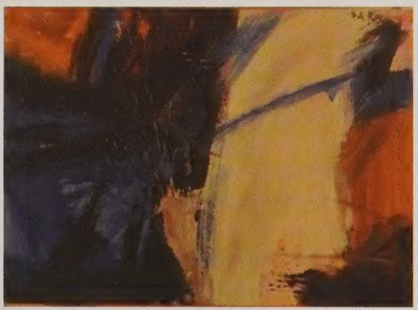

**FIGURE 5.** The "de Kooning" purchased by John Howard in 2007. Oil on paper mounted on Masonite. 20 ½″ x 29″.

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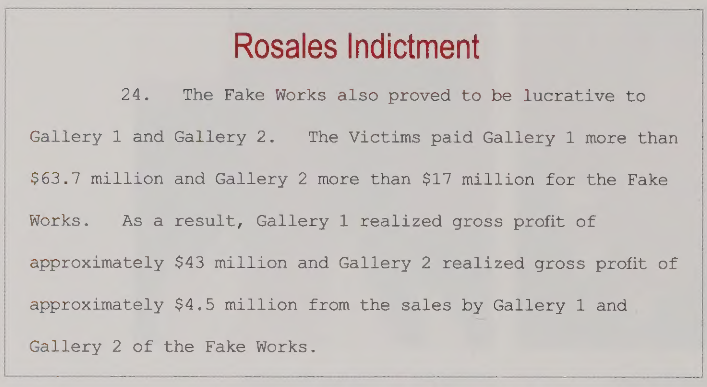
[1] *USA v. Rosales,* 13-CR-00518 (S.D.N.Y., filed Jul. 17, 2013).

[2] *Killala Fine Art, Ltd. v. Weissman,* No. 11-cv-0702 (S.D.N.Y., filed Feb. 1, 2011).



Rosales Indictment

24. The Fake Works also proved to be lucrative to Gallery 1 and Gallery 2. The Victims paid Gallery 1 more than $63.7 million and Gallery 2 more than $17 million for the Fake Works. As a result, Gallery 1 realized gross profit of approximately $43 million and Gallery 2 realized gross profit of approximately $4.5 million from the sales by Gallery 1 and Gallery 2 of the Fake Works.

**FIGURE 6.** Paragraph from the federal indictment against Glafira Rosales that references the revenues from the fake paintings.

complaint against him was dismissed, managed to get a little money out of these huge profits. During discovery it was learned that he bought a million dollars worth of cars alone.

In addition to the Chinese forger, who fled to China, has not come back since and is under indictment, another person, named Anthony "Tony Cha Cha" Masaccio, was also supplying fakes. Masaccio is a friend of Ken Perenyi and features in Perenyi's book *Caveat Emptor: The Secret Life of an American Art Forger* (2012), wherein he brags about being a forger. Masaccio painted works like the fake de Kooning that hangs in my office now **(FIG. 7)**. Like Rosales, he would go into Knoedler and say, "Give me $10,000, $20,000, $30,000," very often in cash to avoid the federal reporting requirements. That is criminal behavior.

While the FBI was investigating, the Knoedler Gallery stopped selling these works, so things were quiet for a while. Then a gentleman named Pierre

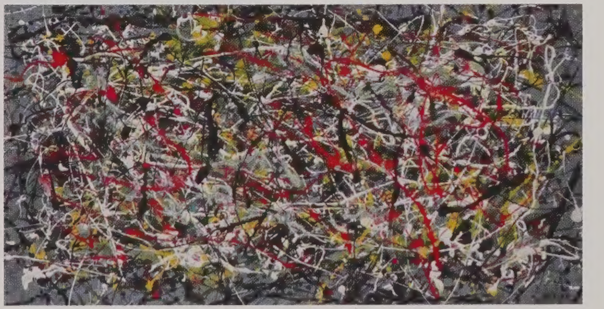


**FIGURE 8.** The "Pollock" purchased from Knoedler in 2007 by Jamie Frankfurt for his client Pierre Lagrange.

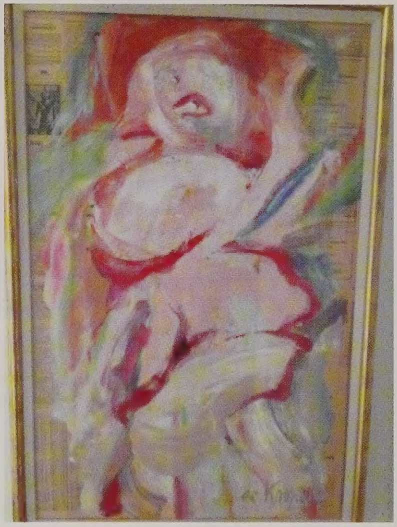


**FIGURE 7.** Fake de Kooning painted by "Tony ChaCha" Masaccio.

Lagrange tried to sell a Knoedler "Pollock" for which he had paid $17 million **(FIG. 8)**. Neither Sotheby's nor Christie's would sell it. He tried to find out its provenance. Lagrange and most of the other victims were told that the painting came directly from the artist or the studio and that it went to a private collection of an anonymous, Swiss, gay, Mexican gentleman, who did this all quietly because he was gay, which apparently was not welcomed back in the '50s or the early '60s, as they later changed the story. Before then, the gallery said the works came from another artist named Alfonso Ossorio.

The private Swiss collector came to be known at Knoedler as Mr. X and was sometimes referred to as "Secret Santa" in the Knoedler files.

What Knoedler didn't tell people was anything about Rosales. They didn't disclose that there were originally only eight works that eventually grew to over forty. They didn't disclose that, in 2003, IFAR had said that Ossorio could have had nothing to do with these art works. They didn't disclose that the provenance was a surmise, which might be another way of saying "made up." They didn't disclose that they didn't know who the Swiss collector was, or his supposed son, or that there were other people involved **(FIG. 9)**. The only one who got that was

Orion Analytical, which has a contract that says, "In order for me to examine your painting, you have to tell me you know the owner and that you have the owner's permission."

When Lagrange couldn't sell his painting, he hired Orion to examine it. Orion found anachronistic pigments that were not marketed or patented at the time that Lagrange's work was supposedly painted. Orion eventually published a report on that **(FIG. 10)**, but Knoedler wasn't impressed with it.

Orion also found that the de Kooning owned by my client John Howard, which has a lot of yellow, has pigments that weren't marketed at that time. Kevin Flynn published an article in *The New York Times* in which one of Ms. Freedman's lawyers said, "We are prepared to demonstrate that the work at issue is genuine."[3] So that was their first defense, "the works are real." They said this was based on experts. They had many experts, including Nicholas Eastaugh at Art Access & Research, who does the kind of work that Jamie Martin at Orion does. He said the issue of anachronistic pigments is much more complicated. Maybe, he said, the artist was supplied with these pigments even though they had not been patented. Perhaps they were experimental paints.

Eastaugh's premise was that the pigments existed at the time, so maybe they somehow got into all these paintings. The problem is that when Mr. Eastaugh was looking at the Matter Pollock fakes in 2005, he said, "The chances of that really happening in that context were negligible." He turned out to be right in *that* case and not in this case. Likewise, they hired Joseph R. Swider, Ph.D., another chemist, with McCrone Associates, the people who studied the Shroud of Turin. Swider said that one sample was similar to the anachronistic pigment (PY 74), but not close enough. Their lab notes, however, said that it was a "good match."

When Ann Freedman was asked why she thought these works were real, she said, "It's a consensus of scholars." Who were they? Some leading scholars, connoisseurs, and a conservator: E.A. Carmean, Claude Cernuschi, Stephen Polcari, Oliver Wick, David Anfam, Dana Cranmer, and others who "viewed" the works, including, they said, the late Kirk Varnedoe. The conservator, Dana Cranmer, who, unlike most conservators, actually sort of opined on the authenticity of the works, or seemed to, by saying how great they were. Despite all this, and while still saying that they thought the work was real, Knoedler suddenly announced that they were closing the gallery, right in the middle of an exhibition, and right when Mr. Lagrange filed

### Knoedler-Withheld Provenance

- Did Not Identify Dealer Rosales
- Did Not Disclose Only 8 works that grew to 40
- Did Not Disclose IFAR 2003 Report re Ossorio Provenance
    - Inconsistent Information Given to IFAR
    - No Research at Ossorio Foundation Until After the IFAR Report
- Did Not Disclose Ossorio-to-Herbert Provenance Change or that Provenance was "Surmised"
- Did Not Disclose Lack of Personal Knowledge of Swiss Owner; Misrepresented to Orion in Contract

**FIGURE 9.** **The provenance and other information withheld by the Knoedler Gallery.**

### Orion (James Martin) Report

*Conclusions concerning PY 73 and PY 74:*

*— PY 73 and PY 74 did not exist in 1950; thus, the signed and dated Works 1735 and 1811-9 are deliberate fakes.*

*—PY 74 existed in the laboratory in 1957 but was not incorporated into paints until subsequent decades; thus, the signed Works 1763 and 1811-2 are deliberate fakes.*

*—The same alkyd paint containing PY 74 on 1735 and 1811-9 points to a common source of the Works.*

*—The same oil paint containing PY 74 on 1763 and 1811-2 points to a common source of the Works.*

**FIGURE 10.** **The section of Orion Analytical's report discussing two anachronistic pigments in the Lagrange "Pollock" and other works.**

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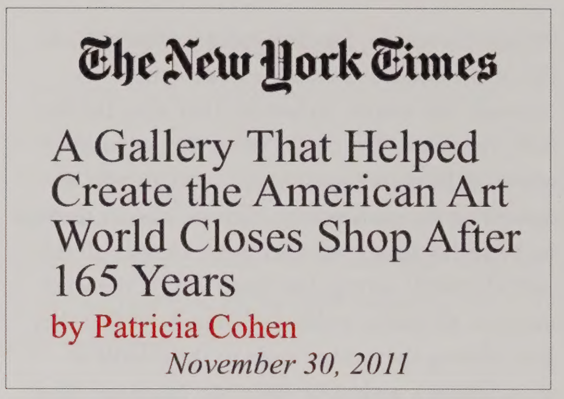
[3] Kevin Flynn, "ArtsBeat," *The New York Times*, July 6, 2012.



The New York Times

A Gallery That Helped Create the American Art World Closes Shop After 165 Years

by Patricia Cohen

November 30, 2011

**FIGURE 11.** Headline from Patricia Cohen's article in *The New York Times.*

a lawsuit **(FIG. 11)**.[4] Very early in that case, Ann Freedman got to testify, and I asked her, "How do you know these weren't painted in a garage?" She responded, "Because I believe they are authentic and by the artist." But, in fact, they *were* painted in a garage **(FIG. 12)**.

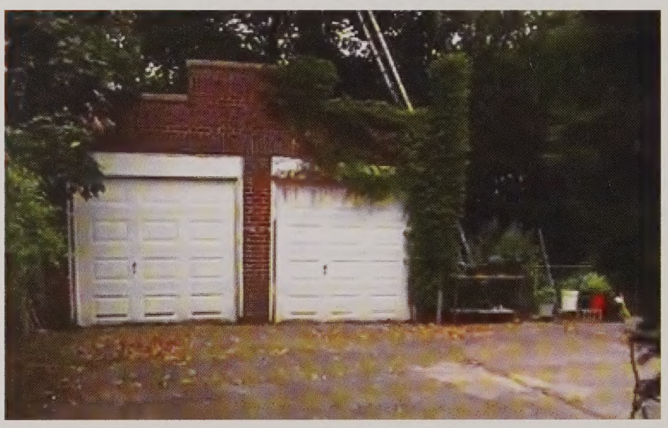


**FIGURE 12.** The garage in Queens, New York where Pei-Shen Qian painted the fakes.

There were eventually about a dozen civil lawsuits filed and also an FBI investigation **(FIG. 13)**. Some people were indicted. Not everyone sued. About 15 people did not. Why? Embarrassment, cost, and some people may have been trying to sell the works.

What were the legal claims? First, that the warranty that comes with every painting had been breached. Failing that, the claim was that everyone had been involved in a massive fraud, including the gallery, including the person who painted the paintings, including the dealers who sold the works, etc.

The defense was, first, that the works were real. Secondly, that there was not enough evidence that they were fake. Then, the suit was too late – the statute of limitations had expired. Then, finally, it was that you just made a mistake in trusting us. You shouldn't have believed us. That's the *Animal House* defense, for those of you who are familiar with that great film directed by John Landis. In other words, you muffed up; you trusted us. In order to have a fraud, you have to rely on someone. If I try to sell you the Brooklyn Bridge, you shouldn't believe me. No one should believe that. But all the victims said, "We went to a fancy art gallery. You told us it was real, and we believed you." The gallery said, "Well you shouldn't have."

> "What were the legal claims? First, that the warranty that comes with every painting had been breached. Failing that, the claim was that everyone had been involved in a massive fraud …"

While this was happening, another judge in a federal court in New York actually said that for an art dealer, that retort may be true. In a case called *ACA v. Kinney,* an art dealer bought a painting that turned out to be fake.[5] He didn't check with the experts beforehand. The court didn't allow him to recover. But all this changed when the FBI got financial records from Glafira Rosales and Juan Bergantiños in Spain. It turned out that Rosales never sent any money to anyone – whether gay, Swiss, Mexican, or their heirs. Rosales wound up in jail. While there, she reflected, pleaded guilty, and spilled the beans. That caused the Knoedler Gallery and its director to say, "we're the victims" **(FIG. 14)**.[6] Several people raised the question, "If you're a victim, can you at least give our money back?" But they didn't. Neither Michael Hammer, nor Freedman, nor the gallery gave the money back. They spent it on legal fees fighting not to give the money back.

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[4] See Patricia Cohen, "A Gallery That Helped Create the American Art World Closes Shop After 165 Years," in *The New York Times,* A2, December 1, 2011, and online Nov. 30, 2011.

[5] *ACA Galleries, Inc. v. Kinney,* 928 F. Supp. 2d 699 (S.D.N.Y.), *aff'd,* 552 Fed. Appx. 24 (2d Cir. 2014).

[6] James Panero, "I Am the Central Victim: Art Dealer Ann Freedman on Selling $63 Million in Fake Paintings," *New York Magazine,* August 27, 2013.

So, here are some lessons from this. You should rely on good people. There *were* some good people. I consider James Martin a friend, but I can say honestly, and I think most people agree with me, that this scandal would never have been uncovered without him. Not only is that attributable to his technical skill, but he showed a lot of courage. He was attacked viciously, and never did someone deserve it less. But he courageously saw it through, and it turned out he was 100 percent right, and his critics were 100 percent wrong. That's what carried the day. IFAR, also, which is a very confidential organization. Sharon was courageous. Jack Flam, at the Dedalus Foundation. And there were some dealers who made mistakes, but at least they gave the money back.

Quick advice in a nutshell: Get a contract when you buy art for a lot of money, and be specific. One of the contracts that Ann Freedman didn't sign asked her to say that she had revealed everything she knew about the paintings, that she didn't know anything negative. And she said, effectively, "I'm never going to sign that. These contracts are silly. My invoice is my bond." But she couldn't have signed that because she knew that in 2003 IFAR courageously had said, "We don't think this painting can stand up as a Pollock."

We can think about what kind of law we want to have. The defendants in these cases and a lot of people in the press said, "Look, a bunch of rich people buying things my kid could paint. You should have gotten better advice. You shouldn't have just relied on the gallery." I think you could consider rejecting that.

Also protecting experts. A lot of experts saw these works. They didn't opine on them in the way the defendants in the cases say they did, but they also were afraid to speak. There is legislation pending that will help that, but there should be other things that can be done to protect experts. Back in 1929 when Joseph Duveen was tried, they worried whether it would silence expert opinions. You see it happening with the closing of authentication committees. So it is important that experts get to do their thing. Even if they give the wrong opinions, they should be protected. The other obvious point is that we should care about the authenticity of art because the artist created it. It does make a difference that Rothko did not paint the De Sole work or the "Rothko" that I brought here, and, hopefully, it makes a difference to you as well.

### Lawsuits Involving Rosales/Knoedler

1. *Lagrange v. Knoedler, et al.*
2. *De Sole v. Knoedler, et al.*
3. *Howard v. Freedman, et al.*
4. *The Martin Hilti Family Trust v. Knoedler*
5. *White v. Freedman, et al.*
6. *Fertitta v. Knoedler Gallery, et al.*
7. *Dar Noor Limited v. Weissman, et al.*
    1. *Killala Fine Art v. Dedalus, Weissman*
8. *Mirvish v. Knoedler*
9. *Arthur Taubman Trust v. Knoedler*
10. *Silverman/Feigen (Roberts) v. Knoedler*
11. *Lane v. Knoedler Gallery*
12. *Cohen v. Freedman, et al.*

**FIGURE 13.** **Lawsuits involving Rosales/Knoedler et al.**

**'I Am the Central Victim': Art Dealer Ann Freedman on Selling $63M Million in Fake Paintings**

**— *New York* Magazine**

**FIGURE 14.** **Headline from James Panero's article in *New York Magazine*, August 27, 2013.**

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# IFAR'S 2003 REPORT

### SHARON FLESCHER*

"After considerable research, we sent a report to Mr. Levy saying that 'too many reservations exist to make a positive attribution to Jackson Pollock.' … That was ten years before Glafira Rosales admitted that this work and approximately sixty others were fakes."

In 2003 IFAR wrote an authentication report on one of the purported Pollocks acquired by the Knoedler Gallery from Glafira Rosales **(FIG. 1)**. The painting was submitted to us by a private owner, Jack Levy, whose name was made public not by us but years later by Patricia Cohen in *The New York Times*. Mr. Levy had purchased the painting from Knoedler for $2 million, and, because it wasn't in the catalogue raisonné, he wisely extracted a condition, which we did not know about, that he would submit the work to IFAR, and, if we didn't support the Pollock attribution, it would be returned to Knoedler.

Ever since the Pollock-Krasner Foundation stopped reviewing works by Pollock for its catalogue raisonné supplement, having been hit with three lawsuits, many Pollock inquiries were coming to IFAR's Art Authentication Research Service, which we've maintained since our founding in 1969 **(FIG. 2)**. After considerable research, we sent a report to Mr. Levy saying that "too many reservations exist to make a positive attribution to Jackson Pollock." We later learned that he returned the work and got his money back. That was ten years before Glafira Rosales admitted that this work and approximately sixty others were fakes. We involved many specialists in the project, and we also undertook extensive research on our own. Per our usual practice, we examined the work from the point of view of scholarship, material properties, and style, that is, connoisseurship.

Like many of the Rosales works, the painting was a pretty good fake, and there were some positive comments about it that we felt duty bound to include in our report. But there were also serious concerns about the style, the materials, the absolute lack of documentation – not just provenance,

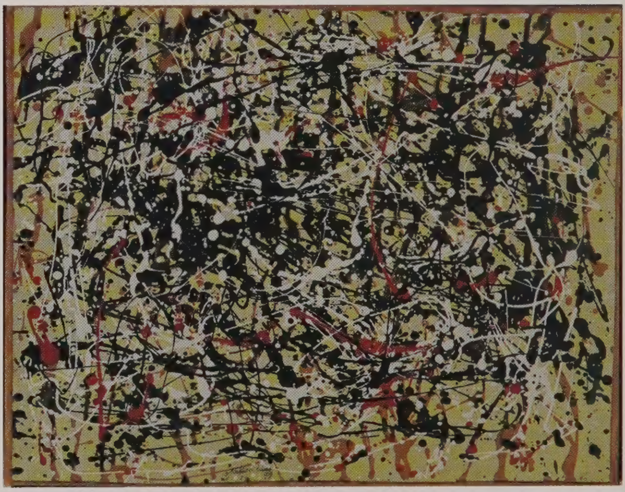

**FIGURE 1.** Purported Pollock for which IFAR wrote an Authentication Research Service report, #02.04, in 2003. Oil and enamel on canvas mounted on Masonite, 17 ¾″ x 22 ¾″.

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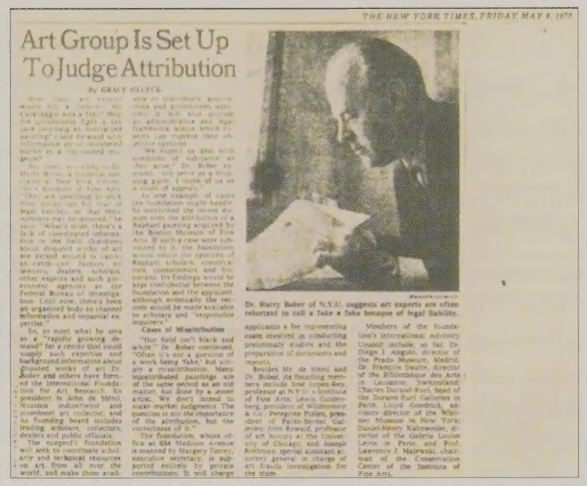
* Sharon Flescher, Ph.D., is the Executive Director of the International Foundation for Art Research (IFAR) and the Editor-in-Chief of the *IFAR Journal*.

but *any* documentation: letters, dealer records, interviews, photographs, *anything* – linking the work to Pollock, although it was dated 1949 and thus purportedly painted at the height of Pollock's career. This was the time when *LIFE* magazine was asking whether he was "the greatest living painter" in America.[1] He is also one of the best documented. So the absence of documentation for Pollock, while not determinative, can't simply be dismissed, as apparently it was by others. Since we're talking about lessons here tonight, let's call that Lesson Number One.



THE NEW YORK TIMES, FRIDAY, MAY 8, 1970

Art Group Is Set Up To Judge Attribution

By GRACE GLUECK

Dr. Harry Bober of N.Y.U. suggests art experts are often reluctant to call a fake a fake because of legal liability.

**FIGURE 2.** May 8, 1970 article from *The New York Times* announcing IFAR's founding.

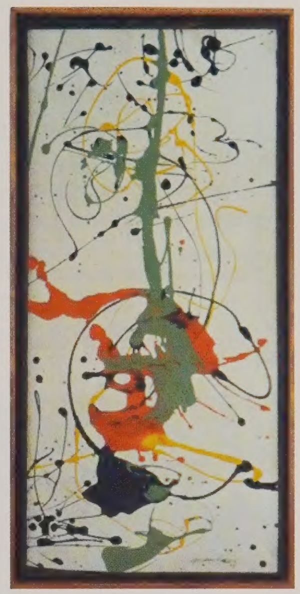


**FIGURE 3.** Jackson Pollock, ***No. 23, 1949.*** Oil and enamel on canvas mounted on Masonite. 26 ½″ x 12 ½″. Private Coll.

> "There were also serious concerns about the style, the materials, the absolute lack of documentation – not just provenance, but *any* documentation: letters, dealer records, interviews, photographs, *anything* – linking the work to Pollock."

Stylistic concerns about the Levy painting ranged from the way the paint layers interacted with each other and with the canvas edges, to the unusual color and application of the thin brownish-green background wash, which made no sense at all in context of Pollock's art at that time. The latter point troubled even those people who otherwise liked the work. The materials were also troubling. The painting, for example, is on canvas mounted on Masonite (a type of fiberboard), but when compared with an unquestioned Pollock of the same date, also canvas on Masonite **(FIG. 3)**, there were disturbing differences. Where the canvas in Mr. Levy's work was mounted on the rough side of the Masonite, which was left raw, in the true Pollock, it was mounted on the smooth side of the Masonite.

More significantly, Pollock added sizing to his Masonite, which had visibly darkened and aged over the years. So there was a dramatic contrast between the two Masonite supports, which is evident when comparing the areas around the strikingly similar signatures[2] **(FIGS. 4A & 4B** and Journal cover**)**. This, too, couldn't be ignored. Also troubling was the way the canvas in Mr. Levy's work was abraded in some areas *before* the paint was even applied; in other words, newer paint over older support. In itself this wasn't damning. In fact, none of these points in themselves were damning. But it was troubling, and the concerns added up.

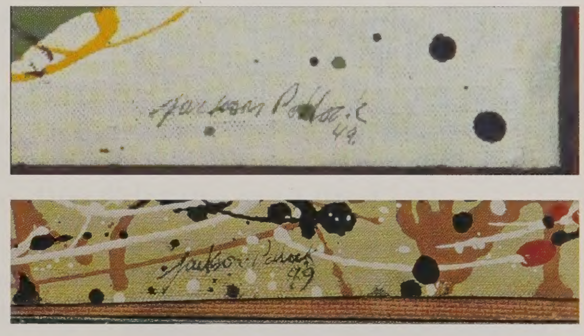


**FIGURE 4A AND 4B. A (top):** Bottom right of the authentic Pollock, ***No. 23, 1949,*** showing the signature and Masonite support. **B (bottom):** Bottom center of IFAR #02.04, showing the signature and Masonite support.

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[1] "JACKSON POLLOCK: Is he the greatest living painter in the United States?" *LIFE* magazine, August 8, 1949.

[2] The authentic Pollock, *No. 23, 1949,* was exhibited in the Jackson Pollock retrospective at the Museum of Modern Art in New York from November 1, 1998 to February 2, 1999. It was also illustrated in color on p. 265 of the exhibition catalogue (showing only the canvas and not the Masonite support), ample opportunity for someone to have studied the signature.

We elected not to do forensic tests because, in 2003, comparative baseline information for Pollock's pigments and binders wasn't available to us. Such baseline information can reveal anomalies, that is, inconsistencies with an artist's known works. In addition, it seemed unlikely that forensic tests, which we believe in but use judiciously, would actually uncover anachronistic materials in this case. Of course, had we known that this painting was part of a large group of undocumented works by modern masters that had suddenly turned up and were being marketed, that alone would have raised the specter of fraud, which would have warranted forensic tests despite the limited chance of finding anything. But we only knew of our work from this group, and only learned of a second one being marketed in the course of our research. The same was true for many other people over the years who viewed individual works from the group. This limited knowledge helped the scam succeed. This is another lesson that I hope that we can return to later.

Also, let's not forget that some, although not all, of what we know now about anomalous and anachronistic materials for Pollock has been learned since the Matter paintings were tested beginning 2005.[3] But, years later, as part of a much larger investigaition, Jamie Martin did find anachronistic elements in many of the Rosales fakes. So forensic testing might have been fruitful after all.

We did, however, undertake fractal analysis[4] on the painting, and the results were negative, meaning that the Levy painting did not manifest the fractal patterns, or ratio of fractal patterns, that some people believe are present in Pollock's poured or drip paintings.

But the jury is out even today on the validity of fractal analysis as a means of determining authenticity in Pollock's works. It is still controversial, and, we, too, are not convinced of its validity. Thus, in an exercise of caution, knowing that our negative report was going to create a stir – and it did – we elected not to mention the fractal analysis, so as not to deflect the discussion from our other concerns. It didn't matter, however, as the Knoedler Gallery vilified us and our report for years anyway. Perhaps more significantly, they hid our report from potential buyers.

Now let's turn to provenance, the aspect of IFAR's report that received the most press. The work was submitted to us with a provenance mentioning Alfonso Ossorio, Pollock's friend and early patron, but there was no supporting documentation. The statements were vague and contradictory. We investigated the Ossorio connection from every possible angle – owner, dealer, conduit – and couldn't substantiate it. We wrote that, and attached sixteen pages of documentation backing up that research. While it's theoretically possible for a recent authentic work to lack a verifiable provenance, it is unlikely. That is a red flag that you can't ignore, although, apparently, Ms. Freedman did. In fact, when I contacted her in the course of our research to get more provenance information, she expressed surprise that we were even researching the provenance.

When it comes to provenance – and everything else – you have the right to your own opinions, but not your own facts. I learned ten years later, at my deposition in 2013, that, within less than three weeks after sending our report, the painting

"When it comes to provenance – and everything else – you have the right to your own opinions, but not your own facts. I learned ten years later, at my deposition in 2013, that, within less than three weeks after sending our report, the painting miraculously had a new provenance, David Herbert. That provenance had just as little basis in fact as did the Ossorio provenance. Both were concocted, and both were refutable with research."

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[3] This is a reference to a group of paintings said to have been found in 2002 by Alex Matter in a Long Island storage unit that once belonged to his father, Herbert Matter, a friend of Jackson Pollock. Their initial attribution to Pollock was called into question. See *IFAR Journal*, Vol. 10, no. 1, 2008, pp. 8-41.

[4] Fractals are self-similar patterns that appear in nature, in, for example, clouds and tree branches. Fractal analysis is a mathematically based computational methodology that measures fractal characteristics by assigning a fractal dimension.

miraculously had a new provenance, David Herbert. That provenance had just as little basis in fact as did the Ossorio provenance. Both were concocted, and both were refutable with research. Provenance isn't a deck of cards. You can't just reach in and grab for another one when the card you're dealt doesn't suit you. There *is* a methodology to art history. In fact, we now know that the gallery's own researchers, including Stephen Polcari, a specialist they hired, tried to, but couldn't substantiate the provenance either, but that, too, was ignored. So this is another lesson. You have to go where the research leads you and be objective and open-minded to what you find. If you can't substantiate your provenance but still believe in a work, say that. It will surely lower the price, but at least it will be honest.

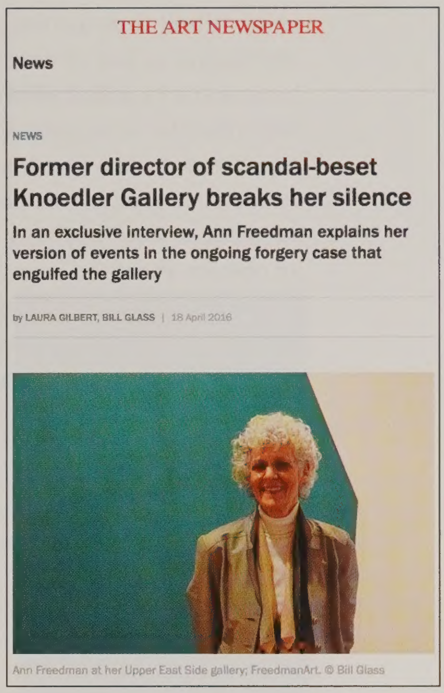
At trial, Professor Polcari objected to the fact that, as part of IFAR's research, we contacted Ossorio's long-time partner, Ted Dragon, who, of course, had never seen the work. Polcari admitted on the witness stand that IFAR's conclusions were right, but said they were right for the wrong reasons. I beg to differ. We were right for the *right* reasons.

Now for some closing points. The imprimatur of the venerable Knoedler Gallery allowed the scam to go forward, and while we *should* trust respected galleries and dealers, and some of the best and most respected are here in this audience, a healthy degree of skepticism now and then wouldn't hurt. So that may be another lesson.

Still another one: getting embroiled in authenticity disputes is expensive and time consuming, but it's important for all of us to answer that call. IFAR has insurance to protect us from lawsuits regarding our opinions, but we learned, to our dismay, that insurance doesn't help when you're subpoenaed, deposed, and asked to testify as a fact witness. But you still need legal advice, and that's expensive. We are a small and, alas, not wealthy nonprofit organization. Fortunately, wonderful pro bono legal counsel came to our rescue, and I want to acknowledge two attorneys who helped us – Peter Stern from McLaughlin & Stern and Gonzalo Zeballos from BakerHostetler.

I mentioned that we and most specialists who examined these paintings were working in a vacuum by knowing of only one or two works. But, in addition, many of us didn't know that other specialists had already raised doubts about the works. Even before IFAR, the authenticity of some of them had been questioned, but we didn't know that. IFAR was only informed of the positive opinions. The painting had come into us with written endorsements by E. A. Carmean and Stephen Polcari. So we felt we were swimming against the tide when we sent our report, and, as I said, our report, too, was suppressed. I hope we can return to this later.

Now my final point: In authenticity research, the burden of proof is on the work in question to show that it *is* by the artist, not vice versa. In the case of Mr. Levy's work, we couldn't absolutely prove that it was a fake and hammer that nail in the coffin. But then, not every work that's excluded from a catalogue raisonné is proven to be a fake. It just doesn't meet the bar for accep-


THE ART NEWSPAPER

News

NEWS

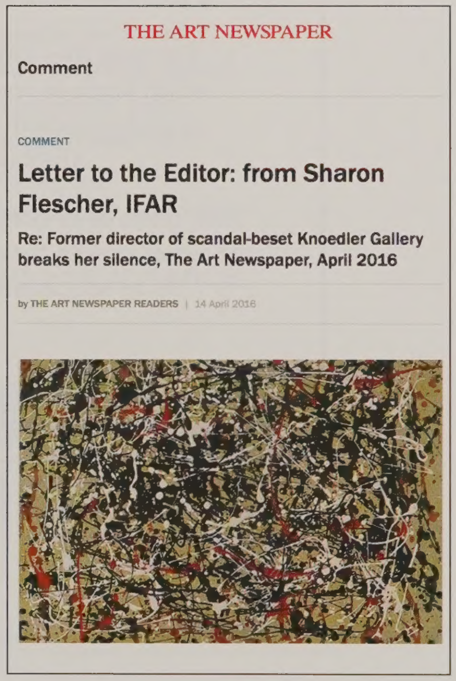
Former director of scandal-beset Knoedler Gallery breaks her silence

In an exclusive interview, Ann Freedman explains her version of events in the ongoing forgery case that engulfed the gallery

by LAURA GILBERT, BILL GLASS | 18 April 2016

Ann Freedman at her Upper East Side gallery; FreedmanArt. © Bill Glass

**FIGURE 5.** Interview with Ann Freedman that appeared in the April 2016 print edition and the online edition of *The Art Newspaper,* revised April 18, 2016.


THE ART NEWSPAPER

Comment

COMMENT

Letter to the Editor: from Sharon Flescher, IFAR

Re: Former director of scandal-beset Knoedler Gallery breaks her silence, The Art Newspaper, April 2016

by THE ART NEWSPAPER READERS | 14 April 2016

**FIGURE 6.** Sharon Flescher's Letter to the Editor that appeared in the May 2016 print edition and the April 14, 2016 online edition of *The Art Newspaper.*

tance. Where there are too many doubts, you can't accept it. End of story. I underscore this because IFAR's conclusions were later twisted. Even recently, in an interview in *The Art Newspaper*, **(FIG. 5)** Ann Freedman said that IFAR "couldn't determine whether the work was authentic or not," implying that we didn't state an opinion about the Levy painting. Not so. As I wrote in my responding Letter to the Editor **(FIG. 6)**, we said three times in our report, and again in my cover letter accompanying that report, that we could *not* accept the work as a work by Pollock. Sorry, that *is* an opinion, and the gallery would have done well to heed it, as Mr. Levy did.

> "In authenticity research, the burden of proof is on the work in question to show that it *is* by the artist, not vice versa. … Where there are too many doubts, you can't accept it. End of story."

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## IFAR ART AUTHENTICATION RESEARCH SERVICE

For more than forty-seven years, IFAR has offered a unique Art Authentication Research Service, which works to resolve questions concerning the attribution of works of art. As a not-for-profit organization with a distinguished Art Advisory Council and a worldwide network of scholars, IFAR is free to render objective opinions unaffected by the marketplace.

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# TECHNICAL EXAMINATION OF THE PAINTINGS

## JAMES MARTIN*

> "… I found that the two works that Freedman and Knoedler owned had been created with water-based synthetic paints. Robert Motherwell began using these kinds of paints in about 1962 or '63. The problem was that the works were dated 1953 and 1955 and had been deliberately altered to appear older than they were."

In late 2007, Jack Flam and the Dedalus Foundation, who were compiling the catalogue raisonné of Robert Motherwell's paintings, had extreme doubts about seven works with the same strange provenance, a secret Mexican-Swiss collection supposedly stored in a hermetically sealed vault since 1959 **(FIG. 1)**. Ann Freedman, then President of Knoedler & Company, owned one of the seven works. Knoedler & Company owned another. The Dedalus Foundation insisted that Freedman retain me to examine the works, which she did through Knoedler. Most people at the time, including me, did not know that the Knoedler Gallery, under Freedman's direction, had since 1994 sold nearly 40 works from the secret collection for more than $60 million. Scholars had expressed reasonable doubts about stylistic attribution and evolving provenance of the collection, but their doubts were either ignored or refuted by Knoedler and Freedman. Remarkably, mine would be the first examination of materials used to create any of the works from the secret collection.

Such technical examination of works of art was not novel in 1994, or anytime after 1928, when the conservation science discipline was established at Harvard. During the years Knoedler sold works from the secret collection, I was examining authenticity for the FBI, Knoedler's competitor galleries, auction houses, museums, and conservators throughout New York City and the United States. Using microscopes and spectrometers, I found that

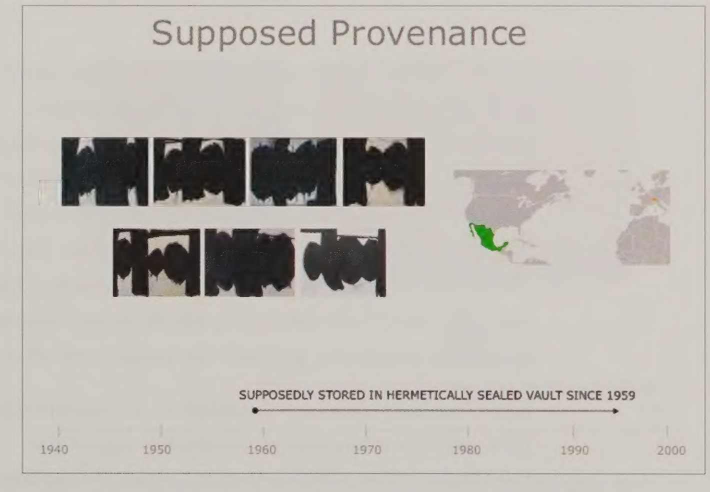

**FIGURE 1.** The 7 purported Robert Motherwell *Spanish Elegies.*

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* James Martin is a conservation scientist and conservator, who participated in the program as Principal of Orion Analytical, LLC.

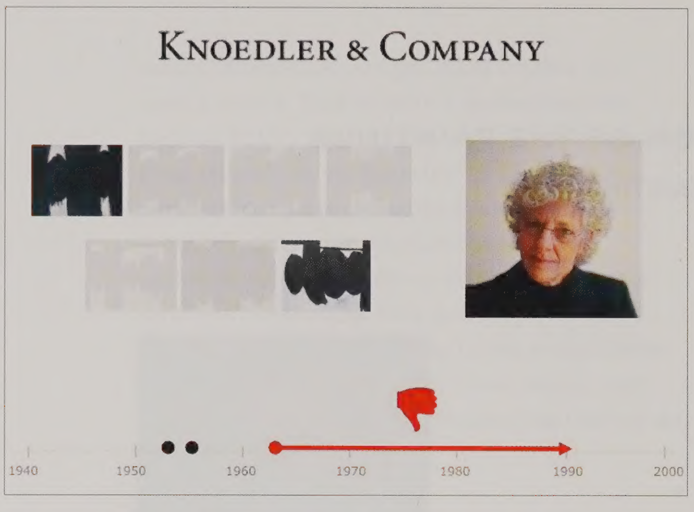

**FIGURE 2.** The two "Motherwell" *Spanish Elegies* owned by Ann Freedman and Knoedler.

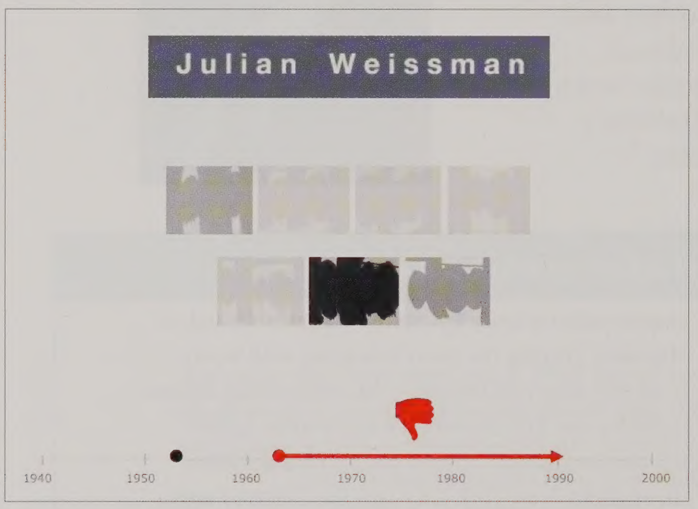

**FIGURE 3.** The "Motherwell" *Spanish Elegy* at issue in the *Killala v. Weissman* suit.

the two works that Freedman and Knoedler owned **(FIG. 2)** had been created with water-based synthetic paints. Robert Motherwell began using these kinds of paints in about 1962 or '63. The problem was that the works were dated 1953 and 1955 and had been deliberately altered to appear older than they were. In other words, the works contained historically inaccurate materials, which raised serious questions about who painted the works, and when.

Knoedler dismissed my findings as conjecture and then asked me to prepare a redacted report for the Dedalus Foundation that modified or omitted my conclusions. I refused. Knoedler also claimed that they found new information since they had received my report; that the secret collection had entered the hermetically sealed vault later than 1959, now as late as 1964, which accommodated my findings. This marked the second or third time that provenance had evolved to accommodate adverse independent findings about the works. My work for Freedman and Knoedler ended in 2009, about the time that a federal grand jury issued subpoenas to them seeking information about the secret collection. In response to the subpoenas, Knoedler let Freedman go and quietly marked its inventory "not for sale".

The next year Jack Flam asked me to examine another one of the seven purported Motherwell works, which the Dedalus Foundation now believed to be a forgery. This third work had been sold by Julian Weissman, who was a former Knoedler employee. I found that this work, too, had been created with the same synthetic water-based paints and had been deliberately altered to appear old **(FIG. 3)**. Like Freedman's work, this work was dated 1953. These findings prompted the first lawsuit involving the secret collection.[1] The lawsuit accused Weissman of acquiring works from an obscure Long Island dealer named Glafira Rosales, who, unlike Knoedler, was an improbable source of forty secret works by Abstract Expressionist masters.

The lawsuit settled in 2011 with the work declared a forgery. *The New York Times* reported it with a photograph of the back of the work, which Dedalus had indelibly stamped as a forgery **(FIG. 4)**. As this news spread, other collectors who had bought works from Knoedler and Weissman became nervous.

In November 2011, British hedge funder Pierre Lagrange asked me to examine a work signed "J Pollock", sold by Knoedler, for which he paid $17 million. I found that the work was created with paints and pigments first introduced in the 1960s and '70s. The problem was that the work was dated 1950 and Jackson Pollock died in 1956.

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[1] *Killala Fine Art, Ltd. v. Weissman*, No. 11-cv-0702 (S.D.N.Y., *filed* Feb. 1, 2011).

Attorneys for Lagrange immediately sent my report to Knoedler, which abruptly closed permanently the next day amidst rumors that the once venerable gallery had been selling forgeries for years. Between 2011 and 2013, I was asked to examine over twenty more works from the secret collection, most sold by Knoedler.

> "Between 2011 and 2013, I was asked to examine over twenty more works from the secret collection, most sold by Knoedler."

The next work I examined was a work signed Mark Rothko **(FIG. 5)**, which Knoedler sold to Domenico De Sole for $8.3 million in 2004, soon after IFAR had concluded that the initial provenance for the secret collection was unsupportable. I found that the work was created with paint colored with a red pigment that was introduced more than a decade after the date on the work, 1956. Disturbingly, a clue that Rothko had not painted the work had always been clearly visible, but, surprisingly, was never questioned by Knoedler or its experts. A white primer was clearly visible between the canvas and the paint **(FIG. 6)**. The problem was that Rothko didn't use a white primer in the 1950s. Curiously, the same white primer was used for other works in the secret collection, which suggested that one painter had created many works in the style of Motherwell and Rothko. De Sole sued Knoedler when it refused to refund his $8.3 million. The lawsuit, which was combined for a time with a similar lawsuit by John Howard, which John Cahill mentioned, claimed there was a criminal conspiracy on the part of Knoedler, Freedman, Rosales, and others. As an expert witness in the lawsuit, I wrote an exhaustive report that detailed my examinations of eighteen works purportedly created by Robert Motherwell, Jackson Pollock, Mark Rothko, Lee Krasner, Willem de Kooning, and Barnett Newman **(FIG. 7)**. In addition to suspicious signatures, like the misspelled signature **(FIG. 8)** on a purported Pollock that Freedman owned — Pollock spelled his last name with a 'c', I found common reuse of old paintings, deliberate alteration, and the same historically inaccurate materials in works

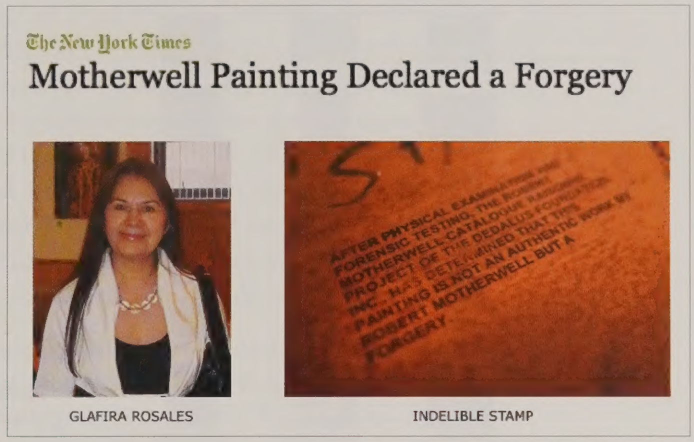

The New York Times
Motherwell Painting Declared a Forgery
AFTER PHYSICAL EXAMINATION AND FORENSIC TESTING, THE ROBERT MOTHERWELL CATALOGUE RAISONNE PROJECT OF THE DEDALUS FOUNDATION, INC. HAS DETERMINED THAT THIS PAINTING IS NOT AN AUTHENTIC WORK BY ROBERT MOTHERWELL BUT A FORGERY
GLAFIRA ROSALES
INDELIBLE STAMP

**FIGURE 4**. *The New York Times* page showing the back of the "Motherwell" painting declared a forgery; Glafira Rosales on the left.

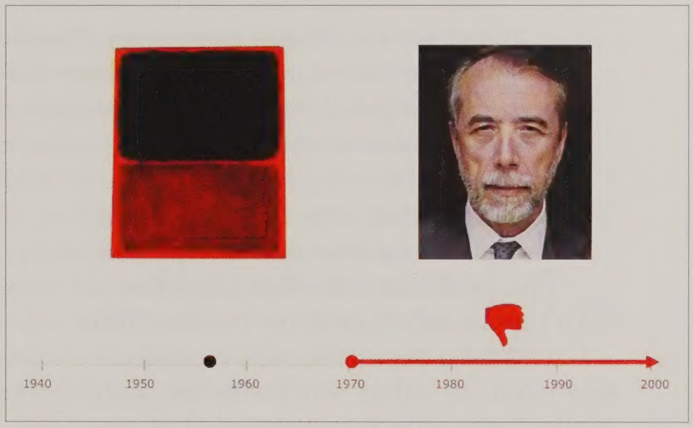

1940
1950
1960
1970
1980
1990
2000

**FIGURE 5**. The De Sole Rothko; Domenico De Sole on the right.

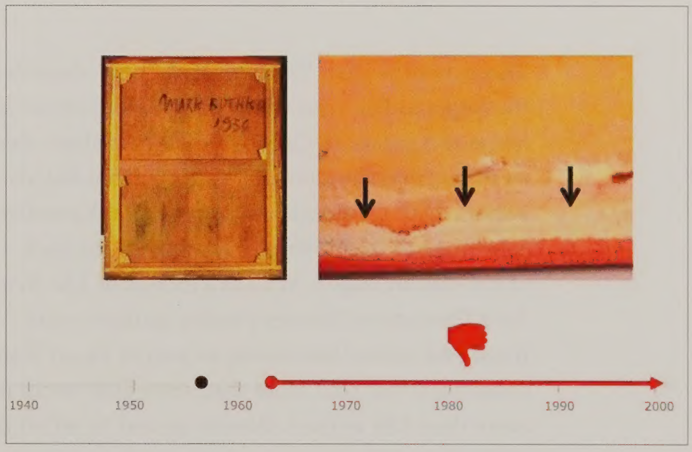

MARK ROTHKO
1956
1940
1950
1960
1970
1980
1990
2000

**FIGURE 6**. Double slide showing the verso of the De Sole Rothko and a detail of the white primer.

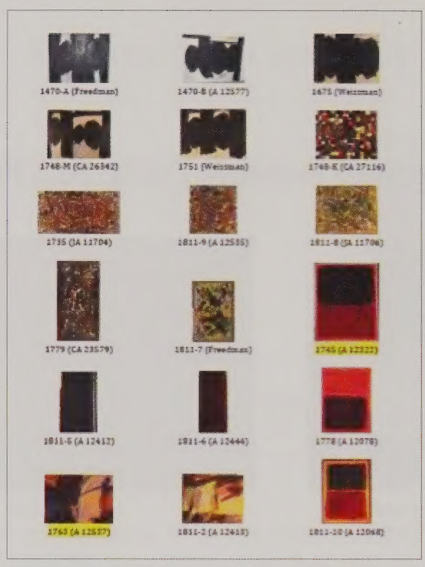
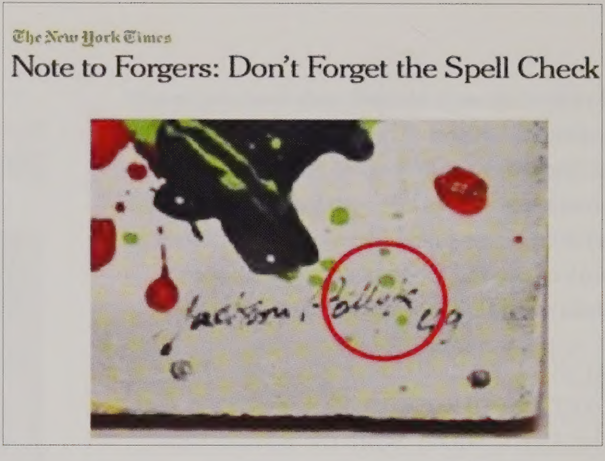


**FIGURE 7**. The 18 works discussed by James Martin in his expert witness report.

attributed to five different artists in two different decades. I concluded that all the works were deliberate fakes that had come from a common source. In other words, the same studio.

> "A white primer was clearly visible between the canvas and the paint. The problem was that Rothko didn't use a white primer in the 1950s. Curiously, the same white primer was used for other works in the secret collection, which suggested that one painter had created many works in the style of Motherwell and Rothko."

Three months later, *The New York Times* identified the forger as Pei-Shen Qian, who painted out of his home and garage in Queens, which was about eleven miles from the Knoedler Gallery. This was also a short drive for Rosales, who arrived at Knoedler from time to time with works of art in the back of her station wagon. Within a month of *The New York Times* story, Rosales pleaded guilty to wire fraud and money laundering as part of an art fraud conspiracy that sold more than sixty fake works for more than $80 million. Rosales agreed to forfeit her $33 million in proceeds, and she awaits sentencing. She faces up to 99 years in prison.


The New York Times

Note to Forgers: Don't Forget the Spell Check

Jackson Pollok 49

**FIGURE 8**. Detail of the misspelled Pollock with the "c" missing.

With the secret collection declared fake, Freedman claimed in an August 2013 article that she was the central victim of the fraud. Freedman chilled public criticism of her due diligence, which failed to detect more than forty fake works, by initiating a defamation lawsuit against an acquaintance,[2] who, in the same exclusive story about Freedman commented, "This has ruined one of the greatest galleries in the world. It has trashed a lot of people's money. It seems to me Ms. Freedman was totally irresponsible, and it went on for years. Imagine people coming to someone and saying every painting you sold me is a fake. It is an unthinkable situation. It is completely insane. A gallery person has an absolute responsibility to do due diligence, and I don't think she did it."[3]

In 2013, I was the scientific expert in more than eight lawsuits and the government's expert in the ongoing criminal investigation. For Knoedler and Freedman, it seemed to me that the De Sole lawsuit was win at all costs since between 2013 and 2016, attorneys and experts working for them were paid an estimated $2 million to attempt to discredit me and my work. The attorneys deposed me three separate times, and their experts combed through more than 8,000 pages of documents that I produced in response to six federal subpoenas.

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[2] *Freedman v. Grassi*, No. 13-158281/2013 (N.Y. Sup. Ct. filed Sept. 11, 2013).

[3] James Panero, "'I Am the Central Victim: Art Dealer Ann Freedman on Selling $63 Million in Fake Paintings," *New York Magazine*, August 27, 2013.

Finding no fault in me or my work, they resorted to fictitious allegations of criminal misconduct, which could result in my imprisonment. Their efforts failed.

In February I told a federal jury about my work for Freedman and Knoedler and for clients to whom they had sold forgeries. The next day Freedman settled her part of the lawsuit, before she could be questioned publicly under oath about how Knoedler, under her direction, had sold historically inaccurate works backed by shape-shifting provenance and careless connoisseurs on retainers, but no technical or scientific examination. Nor was she questioned about how the gallery had handed Rosales cash in amounts under $10,000, while it wired millions to her boyfriend's brother in Spain.

> "The attorneys deposed me three separate times, and their experts combed through more than 8,000 pages of documents that I produced in response to six federal subpoenas."

A few days later, the whole trial ended abruptly after Knoedler settled its part of the lawsuit. The jury never weighed the evidence or decided whether Freedman and Knoedler were guilty of criminal conspiracy under the Racketeer Influence and Corrupt Organizations Act (RICO), which allows the leaders of a syndicate to be tried for the crimes they ordered others to do, or assisted them to do. The criminal investigation remains open. A few remaining lawsuits likely will settle. If Freedman had included technical examination in her due diligence concerning the secret collection, then this repugnant chapter in the history of the New York art market probably would not have been written.

Knoedler will not be the last art forgery scandal to shake the art world. As Hans van Meegeren knew what pigments to avoid in Vermeers he sold to Nazis, present day forgers glean technical information on the Internet and submit fakes to laboratory testing to produce fakes aimed at thwarting scientific detection. Last year, Jules-François Ferrillon published *Forger,* a book in which the main character is taught by a master forger, who, being eerily knowledgeable about modern technical examination, instructs him on how to frustrate and hopefully fool scientists like me. The Knoedler/Rosales affair was identified, exposed, and ended when the disciplines of stylistic connoisseurship, provenance research, and technical examination, the three essential parts of scholarly art authentication, came together in the fierce defense of art history and the artists who made that history.

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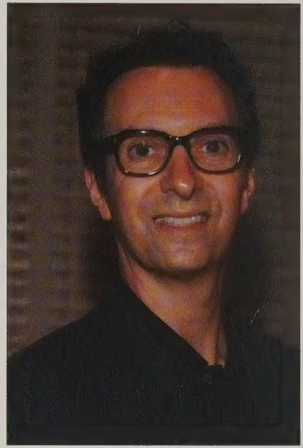
# THE ART DEALERS ASSOCIATION OF AMERICA

### ADAM SHEFFER*



"… this case is an anomaly. Without doubt, a very unfortunate one, but an anomaly nonetheless. In my more than 25 years experience as an art dealer, I have never seen anything like this."

The ADAA is a nonprofit membership organization that supports the economic and cultural contributions of the nation's leading art galleries. Our membership includes about 180 art dealers from cities across the United States, representing thousands of established and emerging artists from the U.S. and internationally. Art dealers play a critical and multifaceted role in both the international art market and the cultural community, from nurturing artists throughout their careers, to advancing scholarship, to mounting major exhibitions and inviting the public to engage freely with incredible works of art.

Galleries foster and represent the relationships that power the art world. It is that second fact – connoisseurship and the advancing of scholarship – that is central to dealers' conversations and responses to the Knoedler/Rosales affair. But before delving too deeply into that discussion, it is essential to note that this case is an anomaly. Without doubt, a very unfortunate one, but an anomaly nonetheless. In my more than 25 years experience as an art dealer, I have never seen anything like this. In fact, quite the opposite is true. The dealers I know and work alongside are extremely diligent in their work. This situation is not representative of the field of art dealers, nor reflective of the expertise, ethics, and best practices upheld by the ADAA. While there were a number of factors and individuals at play in this situation between the Knoedler Gallery and Glafira Rosales, in my opinion, this instance epitomizes the saying, "If it seems too good to be true, it probably is." And let us remember, none of us was there, none of us participated; and this is still being resolved by the legal system.

For the sake of stating the obvious, every work of art is a distinct object, so there is no single guidebook that dictates how to authenticate every work of art. That fact presents certain challenges for our dealers. The ADAA Code of Ethics and Professional Practices requires all members to exercise due diligence in verifying the authenticity of works of art they offer for sale. Although due diligence can be open to interpretation, from our perspective at the ADAA, sound art historical research, connoisseurship, and scientific analysis are integral to the work of an art dealer when encountering questions of authenticity. Advancing art historical research and our collaborations with scholars and people like Jamie Martin are some of the key elements of the work that an art dealer does, particularly when assessing a work's provenance. It is my hope that if there's a silver lining to this situation, it is the reinforcement of the fundamental role that those activities — research, scholarly collaborations, scientific analysis — play in the art world. Dealers, scholars, researchers, individuals, and institutions must work together as the foundation of our business.

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* Adam Sheffer is President of the Art Dealers Association of America (ADAA), on whose Board of Directors he has served since 2009. He is also a Partner and Sales Director at the Cheim & Read gallery in New York.

This conversation has become much more robust as a result of what happened with the Knoedler Gallery. As a general rule for ADAA members, if there are claims that a member has violated our Code of Ethics, which includes due diligence and authenticity, that claim will be investigated. A proven violation can be grounds for censure, suspension, or expulsion from the association.

In addition to the rules laid out in our Code of Ethics, the ADAA considered the claims against Knoedler very seriously from the beginning and took actions to protect the arts community, collectors, dealers, the public, etc. from situations like this happening again, particularly in terms of exhibition at art fairs. For The Art Show in particular, the ADAA's annual art fair, immediately following the first accusation against Knoedler in 2007, the ADAA changed its procedures and strengthened the guidelines for how the association addresses a situation when the work on display at a fair does not meet the approval of the art show committee in its sole discretion. Let's remember that the ADAA is not a policing or vetting organization, and it is expected that all our members comply with the Code of Ethics. Also, these works were exhibited in museums, not just art fairs. Every exhibitor now is required to sign a contract that states that they understand that the ADAA has the right to order any work displayed by the gallery that does not meet the approval of the art show committee to be withdrawn from the fair. The exhibitors also agree that their booth may be evaluated for authenticity by people designated by the ADAA whose identities are not disclosed and that evaluation may be used in the ADAA's sole discretion for, among other things, determining participation in future art shows or even membership. While this may go without saying, within the fair's contract, each exhibitor now also agrees that it has no reason to believe that any work displayed is not authentic, or is misattributed or a forgery.

"... immediately following the first accusation against Knoedler in 2007, the ADAA changed its procedures and strengthened the guidelines for how the association addresses a situation when the work on display at a fair does not meet the approval of the art show committee in its sole discretion."

I cannot stress enough how central art historical research and connoisseurship are to the work that we do as art dealers. Connoisseurship comes from a dealer's depth of experience working with particular artists, schools, and periods over time. It is crucial that this nuanced eye work hand in hand with careful research, as well as the advancing scientific analysis that Jamie has addressed; each reinforcing and supporting one another. It is upon the basis of these best practices, sophisticated skills, and sound judgment that art dealers build lasting relationships of support and trust with artists, collectors, and the cultural community more broadly. These strong, long-held relationships ensure the success of galleries and distinguish their vital role in the art world. In light of that, the ADAA is proud that its members uphold the best practices in the field. And as a community of peers with a common set of standards and practices, we approach any possible violation of these practices carefully and very seriously.

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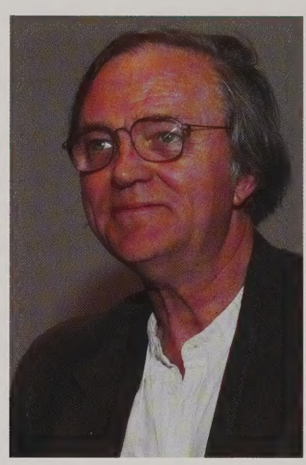
# SOME REFLECTIONS ON AUTHENTICITY

## ROBERT STORR*

"It is not about who wins and who loses in the market; it's about who wins and who loses over the long history of art, in the experience of art."



I have been asked to talk about how the Knoedler/Rosales issues reverberate in other domains, and, to use a dreadful word that's widely used in the art critical world, I'm going to *problematize* things. They are very problematic already, but I'm going to make them a little bit more so.

It is significant that this case—and many such cases—are about handmade paintings, and particularly about Abstract Expressionist paintings. That was also true of the important Matter Pollock paintings. These are bodies of work—if you're talking about Impressionism or other movements thereafter—where the unique gestures of the artist are the most highly prized aspects of the work, so that if you begin to play with that idea of originality, you play with a whole system of values behind the works themselves. It is significant to say that a great deal of art does not have that quality. Moholy-Nagy's two enameled plates (*Construction in Enamel 2* (1923) and *Construction in Enamel 3* (1923)), which are at the Museum of Modern Art, represent exactly the same design executed in two different sizes according to his specifications. For him, part of the point was to stress that the originality of the artist's touch, the artist's hand, was not, in fact, a value he prized. It was not a value he was promoting; that new art in the new era would be of a different kind.

It is also worth mentioning that the old studio systems of pre-modern times, be it Rubens' or Rembrandt's or others, involved many hands at work, on paintings which would then be signed by the artist but maybe only partly painted by him, in some cases, *barely* painted by him. So, when we think about the Knoedler/Rosales case, we have to see it in the context of many other art values which are highly contested by historical example. Moreover, they are currently being contested by younger artists who have entered into the play of what is original and what is fake in order to plumb the depths of our preconceptions.

If we fixate on cases like this, do we begin to reassert the primacy of things that are in fact not necessarily primary for all artists in all situations? Do we, in fact, go back to a definition of art that is more conservative than the art that is being made, or at least more conservative than the art that is now being made? For what it's worth, I worked briefly for David Alfaro Siqueiros, who was Pollock's teacher, and when I did so, I worked in Mexico on a mural painting. It was a dreadful mural painting, but I had a hand in it. On the scaffoldings, way above the ground where Siqueiros was shouting out directions, all the assistants who worked for him had little paintings going, made with his materials and in his manner, which they would then sell to the hotelier who was financing the project. So, in a way I was doing, on a much lower level, what the assistants of Rembrandt and Rubens were doing. The idea of the categorical original is actually an anachronism now and was never the dominant way of thinking about art during most of western art history and, for that matter, most of Asian history. So that's one thing.

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* Robert Storr is Professor of Painting, Yale School of Art, where from 2006-2016 he was also Dean. Previously, he was Senior Curator, Dept. of Paintings and Sculpture, Museum of Modern Art, New York, and, in 2002, he was named the first Rosalie Solow Professor of Modern Art at the Institute of Fine Arts, NYU.

Now, in this particular set of circumstances, the conversation tends to go towards the transactional relationship. Who is cheated by whom? Who is the victim and who is the victimizer? Who is the criminal and who is the innocent? I think one can fairly say after these presentations that there's almost nobody who is totally innocent. The desire to believe an implausible proposition makes you at least party to a fraud. You may be an *innocent* party to the fraud, in the sense that you're not consciously doing this, but if you don't ask questions, if *caveat emptor* does not apply in your relationships with all these things, if you lack a willingness to believe that somebody you like may be a crook … Why do we call tricksters confidence men? Because one expresses confidence in them. They inspire confidence, and they use that confidence against the people whom they cheat. But the desire to *not* believe your alarm signals—your bullshit detector— is a big, big problem here, and I think that's something that needs to be considered.

This is a transactional relationship, and the story is about people who did wrong things, as well as about the people who were taken advantage of. But they are all of them party to an economic transaction in this case. I would like to second something that Adam Sheffer raised; namely, what is the public interest in cases like this? I think it is far more important than the dollars and cents lost by people who have an awful lot of them to begin with, and also by the people who were gulled in the business of art. Many of us have different relationships to and opinions about the business, but once you get into business, you are in a different realm. What about the public? These kinds of cases inspire profound cynicism in a public that is largely disinclined to take any modern and contemporary art seriously. If this case had taken place in London, it would have gone on every tabloid cover for weeks, and months. When I curated the Robert Ryman show in London, we made the covers quite regularly. A torrent of mockery was unleashed and a play was actually written about that exhibition, or at least about that artist. So when you have cases like this, they underscore a profound cynicism about art that many people harbor already. It's not the automatic response of people who are not artists, but these cases provide fuel to the flames.

That really is the ultimate cost of this. I can't actually say I'm very sorry for a hedge funder who lost $17 million buying something he didn't investigate from somebody who really didn't play fair with him. It's too bad, but he can afford it. But I think the public cannot afford the equivalent loss of faith in the seriousness of museums and of artists. That, *we* cannot afford.

"In this particular set of circumstances, the conversation tends to go towards the transactional relationship. Who is cheated by whom? Who is the victim and who is the victimizer? Who is the criminal and who is the innocent? I think one can fairly say after these presentations that there's almost nobody who is totally innocent."

Lastly, the artists can't do anything to prevent frauds of this kind. In most — though not all — cases they are dead. There are always fakes being presented to artists, and artists will then, if they wish to, strike them off. But there are now legal liabilities for artists as well as for dealers. If you cancel out somebody's investment by simply saying, "No, this is wrong." And then if somebody says, "Well I can prove to you how it's right," and they have a certain number of circumstantial things to prove it, they can do to the artist what was done to IFAR, what was done to a lot of people who were here, pressure them to yield, to give up the fight, because it's just too expensive to pursue it.

If the artists are directly the victims, there's also the question of the bodies of work that they create. When you begin to proliferate the number of fakes, you pollute the catalogue of their achievements, you muddy the definition of what an artist's oeuvre has been. Now, as a curator, I'm often interested in anomalous things made by artists. When I did the Gerhard Richter show at the Museum of Modern Art, I put in a couple of paintings that made people scratch their head and say, "What's this there for? It's a minor thing; it's ugly, it's not the Richter we know and love." I put the works there partly because I thought they were not so bad, but I also put them there because I thought those anomalies are part of the artistic process. Unless you can show things that don't fit the definition of an artist, that is, the public, commercial, museological definition of that artist, you misunderstand where creativity comes from and how it materializes.

"These kinds of cases inspire profound cynicism in a public that is largely disinclined to take any modern and contemporary art seriously."

Let us suppose that suddenly all of the *vache* paintings of Magritte had emerged at the same moment, and somebody had presented one to the public and said, "I got a whole new body of work by Magritte that had not been documented." And if we didn't know, in fact, that Magritte made those paintings, that he did it out of a spirit of perversity akin to that of Picabia, de Chirico and other wayward modernists, we would have an utterly different understanding of that artist. I think most serious artists have had their *vache* periods or have made their *vache* works of one kind or another. So if you establish catalogues raisonnés that document only streamlined, consistent bodies of work, you are also creating catalogues that lie about artistic process, about artistic value. Failures are important, and all artists make failures. Most forgers tend to reproduce things that look pretty much like the things that are known as signature works—Elmyr de Hory specialized in this. If you suddenly increase the number of things like that with phonies, that effectively shows the artist creating a brand, as if that had been his or her primary ambition. So even if it really is a plausible fake that you might like to have in your house, it says something about the artist.

I had a relative who owned a very fine Analytic Cubist Picasso, and when she died, she left me her copy of it. She was an artist without any creative talent whatsoever, but she had a marvelous talent for faking pictures. And she did it for very good reasons. When she loaned works to exhibitions, she wanted to have one at home. Or vice versa. Once I believe she loaned the fake. Indeed, in the early 1980s I got a call from Pontus Hulten inquiring about the whereabouts of the copy, which he wanted to borrow for an exhibition he was organizing at the Palazzo Grassi. Also among the paintings she owned was Picasso's portrait of his mistress Fernande Olivier, which is now at the Boston Museum of Fine Art. The copy she gave to me. A decade after her death, I was contacted by Jan Fontein, the director of the BMFA, who insisted on coming to my house in a funky part of Brooklyn to verify that his museum had received the right picture. Anyway, for years I have been living with a fake, and I like this fake, and I enjoy looking at it, but I know it's a fake, and I also know in what particular ways it contains less information than the real one does.

Recently, in a conference in Athens, I was asked, "What's the big deal? After all, we can do reproductions that are dead on." The thing is that a painting, and a sculpture for that matter, or a print, or anything else, is not just the image. If you can produce the image to scale in another medium, you are still dealing with another thing entirely. How exactly light hits the surface in a Ryman, the way in which he lays the paint down, is very important to how Ryman's works look. How exactly that happens matters, and if what you've got is a fake that reproduces that badly, or a version that is a photographic translation but as a translation into an inherently different medium fails as a holistic equivalent, so then what the public sees is only a fraction of what the artist made valuable.

As we look at these questions, we should remember that we are looking at a slice of art history for which a certain set of values were developed, but they're not the values of art for all time, nor art of all forms and cultures, and it's easy to point to places where they're not. Therefore, when we use terms like originality, we have to use them advisedly and sparingly. They are absolutely essential for the work these experts do, but they're not actually what people go to look for when they go to see paintings. They do not look at the authenticity of the artist's mark; they look at the mark. That's another thing. You don't admire the performance of a painting, in most cases, you admire the *painting* for what it is. It is not about who wins and who loses in the market; it's about who wins and who loses over the long history of art, in the experience of art.

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## 20/20 HINDSIGHT: LESSONS FROM THE KNOEDLER ROSALES AFFAIR

### PANEL DISCUSSION

**Moderator: Patricia Cohen (PC):** Those were really interesting presentations and all from different perspectives. Let me start the discussion with two things that seem to be at the center of this and that run through all of the presentations. One is this dilemma – I think, Sharon, you held another IFAR panel touching on this – we have a situation where neither the foundations, nor the estates, *nobody* wants to authenticate anymore. It seems we've hit an impasse where even the lawyers representing the estates or the foundations are telling the experts not to say anything publicly. That happened in this case. What do we do? Who or what is to say whether something is authentic or not? How do we get around this legal conundrum?

**Robert Storr (RS):** There should be some kind of price to be paid for harassment of scholars and experts in the proper pursuit of their discipline – either to be paid up front when you attack them, if you have no grounds for the attack, or, as in British law, where if you sue somebody for slander and don't prevail, you lose all the court costs plus whatever penalties. If people file frivolous suits, there ought to be a similar balance system. Among other things, I was on the board of the Andy Warhol Foundation at the time of the suit about the putative Warhol,[1] and I am the president of Robert Ryman's foundation. In both situations, we were – are – very cautious about getting into authentication, but both artists (Warhol much more so than Ryman) have been forged a good deal, probably because on occasion both artists used techniques that eschewed traditional painterliness. How do you look at a work if you know that the chance is that it is not *the* work?

> "... we have a situation where neither the foundations, nor the estates, *nobody* wants to authenticate anymore."
> — Patricia Cohen

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[1] *Simon-Whelan v. The Andy Warhol Found. for the Visual Arts*, No. 07 Civ. 6423 (LTS) (S.D.N.Y. May 26, 2009).

**Sharon Flescher (SF):** That is a very legitimate question, Patti. We forget that artists' estates and foundations are a relatively new thing. When IFAR was founded, there were very few. They started to proliferate in the 1980s and '90s, and now they're pulling back. I personally think – and Jack Flam of the Dedalus Foundation, who wasn't able to be here tonight, would be the first person to say this – that they *do* have a responsibility to opine on the works of their artist. *They* have the responsibility for the integrity of their artist's work. But many people don't agree with me, and I understand their fear. It is a legitimate fear. I explained in my talk that we weren't sued or even threatened. I should say that our client was Mr. Levy, not the Knoedler Gallery, but we made Knoedler as well as Mr. Levy sign an agreement not to sue, which turned out to be one of the smartest things I ever did. At that point, I had not even seen the work; I had no knowledge of the work, nor did I know about Mr. Levy's agreement with the gallery. I just knew that if we said that a work of that value wasn't good, which I didn't anticipate happening – I assumed it would *be authentic* – that Mr. Levy would want to get his money back. I didn't want to risk that kind of suit. That said, we were not sued. Mr. Levy was made whole, so he didn't sue, and Knoedler never even threatened to sue, although, as I said, they bad-mouthed us.

At some point, you have to own up to a responsibility. If no one takes the responsibility about this, it's going to be an even bigger problem. So I feel that the artists' estates and foundations do have a responsibility. We hosted a program after the disbanding of the Warhol Authentication Board, and other artists foundations said then they were following suit or not getting into authentications. I understand why, but it is a predicament.

**PC:** As John Cahill, I'm sure, could tell us, even getting someone to sign a piece of paper saying they won't sue does not necessarily stop them from suing.

**SF:** Yes, this is the good old USA and everyone thinks he has a right to a day in court. Legislation recently failed to pass for the third year in a row in New York State that would have protected specialists when giving opinions. In the first year, that legislation had a provision, just as Rob Storr suggested and is the European model, that if you sue the specialist and fail, you would have to pay their legal fees. When the bill came back the second year, that provision was watered down, and again in the third year. Even so, the legislation didn't pass.

**John Cahill (JC):** Our local New York City bar association was a prime mover behind that legislation, and the attorneys' fees provision was an important part of it for exactly the reasons that Professor Storr said. It is very expensive. The Warhol Foundation reportedly spent $7 million defending itself against those accusations, using the same law firm, coincidentally, that Ann Freedman later used. So I did think that was important. That's why lawyers say you should be careful, and the College Art Association, the professional association of art scholars, says not to do authentications. We continue to try to press for that legislation.

The good news is that the experts and scholars almost always win, and there are cases where they recover attorney's fees. But it's hard, and, as anyone who's been sued or even subpoenaed can tell you, it's also a miserable situation. But it's important for experts to do that knowing that they'll win. Hopefully, they can get some help. Insurance is available, but it is difficult. That's why we want to create an environment where scholars can say something and also get it wrong. It's ok for scholars to get it wrong as long as they're not, as was the case with a couple of folks in the Knoedler case, making money under the table without it being disclosed. The scholars should be protected, and they do usually win. But we just have a different culture here in terms of legal fees. The New York State legislature believes that people should recover legal fees only rarely. We want to encourage people to take a chance.

**RS:** Let me say something about the politics of public perception. Basically, the claim was that the Warhol Foundation was trying to manipulate and control the market in order to maximize its assets, which was rubbish, frankly. It was giving away its assets and at that time because there was nothing left of prime quality, they were giving away Polaroids and prints to smaller institutions. The income from the reserves that they had built up was going to artists. So the focus of the Warhol Foundation was not on maximizing its assets. It was in how to *allocate* those assets. Paying $7 million or whatever to lawyers to defend itself rather than dispensing that amount to artists during a grim economic situation for artists was a difficult choice to make. The public doesn't see this. The public sees an art world where capital moves up and stays up. But, in fact, many of these foundations are in the business of bringing it back down and redistributing it.

**PC:** The other point that I wanted to ask you all about is the very nature of the art world business, its lack of transparency. Prosecutors note that art has become a favored business for money laundering because you can write "private collection," just as Knoedler did, and it covers a multitude of sins. It's understood that buyers don't necessarily want to reveal their identity, or sellers. We see that even at public auctions. And so, Adam, let me start with you. Is there something in the nature of the art world that this penchant for secrecy and privacy perhaps goes against other more pressing interests?

> "This is not just an art world issue. This is something that happens in all businesses. We have to remember that. We all know the name Bernard Madoff, and he certainly wasn't an art dealer."
> — Adam Sheffer

**Adam Sheffer (AS):** It's an interesting question, which brings up a whole other conversation of private sales in privately owned galleries versus sales in the public arena at auction. People tend to say that something that's happening at auction is more transparent than something that's happening privately. Actually, it isn't transparent; it's just public. There's a misunderstanding about this entire concept. I do think that in the next couple of years this is something that's going to reveal itself more and more in terms of our business. It's something that we are making available to the public in order to create greater confidence and a greater understanding of the nature of the relationship between the artist and the gallery, and the gallery and the client. We are the middle man, often between the foundation, the estate, or trust, and the collector. We have to do well by both sides, and that's something that people are going to understand more in the next couple of years. I think the mistrust of auctions is also going to bring confidence back into the gallery despite what happened here in a very anomalous situation. This is not just an art world issue. This is something that happens in all businesses. We have to remember that. We all know the name Bernard Madoff, and he certainly wasn't an art dealer.

**PC:** Yes, of course, there are crooks in every business, but there are certain practices in the art world that make it perhaps easier. No doubt, this case is an anomaly, and certainly the scale of this was much larger, but Knoedler was a very respected art gallery. Rob, I have to take issue with your point about how at least some of the buyers, although, yes, the violin for somebody who can afford a $17 million painting is quite small, but, nonetheless, I think it was completely reasonable to go to a gallery that has a reputation and assume that … You know, you're not going to go to Tiffany's and say, "Well, I'm going to hire an expert to tell me that this is a real diamond." You're assuming it's a real diamond *because you went to Tiffany's.* And so the problem with what you said is that it's only after the fact that we know that one of these reputable dealers is not being truthful.

**RS:** I take your point, but I do think that buying things where you have no history of the piece moving through the system is just stupid. And it's the kind of stupidity for which I feel very little sympathy.

**JC:** On behalf of some of those folks … first of all, one of them bought something that was going to be given to a children's charity that would have been worth over $10 million. These folks are not stupid. They are very smart people. They are not art historians; they're not necessarily schooled in art. And they *did* have information. They were told by a very reputable gallery that had been around for more than a century that it knew who the person was. The person was an important Swiss collector who got it directly from the studio; that it had come through a respected advisor. They didn't know all the bad things. The buyers were given very clear representations that they were entitled to believe. That's the question we have to ask ourselves. Is that the kind of art market we want to have, where you can go into a reputable gallery, as Adam was talking about, and if someone tells you something, you can believe it's true. Knock wood, the judge in the Knoedler case said, "Yes, that's good enough to rely on."

"You're not going to go to Tiffany's and say, 'Well, I'm going to hire an expert to tell me that this is a real diamond.' You're assuming it's a real diamond *because you went to Tiffany's.* ... It's only after the fact that we know that one of these reputable dealers is not being truthful."
— Patricia Cohen

"I take your point, but I do think that buying things where you have no history of the piece moving through the system is just stupid. And it's the kind of stupidity for which I feel very little sympathy."
— Robert Storr

There are good reasons and bad reasons for the lack of transparency. The art dealers want to protect their commercial interest. If I tell you who my seller is, then how do I know that the next time, or this time even, you're not going to go around me? That happens. Sellers, sometimes because they're selling very valuable paintings, are either shy or concerned about security or other reasons. They don't want to be known. Whatever the reasons, there's no way for most buyers to know who is selling the work. And every once in a while, you do get something that comes out of the blue. You have a Gerhard Richter you've never seen before, or that he gifted to someone, or something like that.

These folks did have information. They did get warranties. In the case of the De Soles, they got a letter from the gallery saying exactly the same thing. Many people did. They got a list of experts who supposedly viewed the painting, ranging from giants like Kirk Varnedoe to Jack Flam. The De Soles weren't just walking in off the street and buying it. They did get lots of representation, which they were entitled to believe, I think.

**RS:** That brings up the question of the so-called "Varnedoe attribution," which has to be a flat-out lie.

**SF:** It was.

**RS:** And since it was flat-out lie, why has there been no prosecution of the people who perpetrated that lie.

**JC:** There we agree. Besides, there *are* people who have been prosecuted, and I'm told there is still an ongoing investigation. But there are questions about why there aren't prosecutions. There are answers, I'm sure, but the representation that the owner was known was alleged to be false. We never got a resolution of that because all these cases have settled. Those were the allegations.

**AS:** What I find very interesting, and somebody mentioned it, is this notion about a gut instinct. We've all read Malcolm Gladwell, and we all read what Thomas Hoving said about looking at a certain piece of Egyptian art when all the documentation said it was right, and he absolutely knew it wasn't. He was proven correct. What Martha Parrish said during the trial is something that keeps coming back to me. As a dealer, when you get a work of art in that has a questionable provenance, or there's something that doesn't match up, you really do your best to work it out. You call sources and you trace it. That's our job. You engage scholars, if they're willing to work with you. But when you see thirty or forty, you run like hell.

**PC:** Let's go back to the role of the expert. We have the spectrum here of scholars who did exactly what you would expect them to do – look very carefully. But let's put aside connoisseurship for the moment. Even technically. Jamie, there were two other experts who do what you do, who fudged the conclusions or who suggested that they came out differently. There were some experts, connoisseurs, some of them well regarded, who looked at the works and said they thought they were true. Some of the works were good fakes, obviously, and that can be misleading. Then, there were clearly scholars who had a financial interest, whether a direct one because they were making a commission off the sale from *both* the buyer and seller, in some cases, or were in the employ of the gallery in some other way. So, Jamie, just to start with you, where do we go in terms of the competing experts, because if you talk to juries afterwards in these kind of cases, their view is to throw up their hands. One expert says this, and one expert says that. What am I to believe?

**James Martin (JM):** In the United States, the best way to assess a technical, scientific expert is to find out if the person is a member of the American Institute for Conservation and if they're a peer-reviewed member. In other words, is she or he a Fellow of the American Institute for Conservation, because fellows, like me, have extensive experience and, in addition to promising to follow the Code of Ethics, we've demonstrated adherence over a long career.[2] Unfortunately, there are few of us in the country that fit that bill. There are a lot of "me" [conservation scientists] in museums, but museums usually prevent them from doing this sort of work.

But there are simple technical things that don't require a scientist. Just look at the work. If it's a work purportedly painted by Mark Rothko in the 1950s, look to see if it has a white ground. Rothko was using colored transparent grounds in the 1950s, not opaque white primers. That information was published by the time that Ann Freedman was selling Rosales works. It was hiding in plain site. Often, people don't look closely enough, and they don't assess what they see. In most of the works that I looked at in this case, there were glaring problems hiding in plain sight. Most of the works had dirt that was spread across the surface, built up on one side of the brushwork. Dirt doesn't deposit that way naturally.

Your best friend in such a case is a good conservator who has experience working with different artists or different materials. Ask the conservator to do a careful technical examination of the condition of the work, but do not ask the conservator to opine on authenticity. It's not what conservators do. Unfortunately, that's what happened in the Knoedler case. The conservator who examined all the paintings for Freedman didn't stop at, "This is a work in remarkably good condition for its apparent age," but went on to opine about what a great example of the artist's work it was. She went too far. So find a good conservator, look closely, and call someone like me once in a while, if you need to.

**JC:** There *are* things you can do. I put out a checklist once, which is one of the things that Knoedler lawyers put in the book – see, there's a checklist and none of these people found it. Of course, I wrote it *after* the Knoedler forgeries. It's what I think people *can* do, not what they *should* have to do. I think they should be able to believe what art dealers tell them. You can research the provenance. Knoedler never went to the Ossorio Foundation until *after* the IFAR report. So you can go to catalogues raisonnés; you can consult scholars; you can put all these things together and, when appropriate, consult with a forensic scientist. So it's not as if people buying art or museums accepting art are completely without resources. It's a little harder because you don't always have a central authority who's willing to do it. But there are good solid things that can be done, so that you can have a high degree of confidence when you're dealing with reputable people and good information. The problem is, Knoedler was putting out bad information, sometimes from disreputable people.

**SF:** One of the things that came out at trial was that many specialists' names had been invoked who later claimed that they had not given those opinions. On the witness stand, Jim Coddington and other people said that their names were used but that they had not commented.

**PC:** There was, at least in some cases, an artful use of language, such as "viewed by," which is, they looked at it. Which brings you around to the other issue, of silence. Many of those people may have thought the works didn't look right, but didn't want to speak out.

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[2] http://www.conservation-us.org/membership/current-members/peer-reviewed-designation#.V-54IK7uw6U

**RS:** The fact that you view something and don't voice doubts doesn't mean that you have voiced an affirmation. I know numbers of people who were invited to look, gave no opinion, but also gave no negative opinion, and Freedman interpreted that to her benefit wherever she possibly could.

**PC:** In fact, she testified under oath that she did that, that if people didn't say anything negative, she assumed that was confirmation.

**RS:** Which is crazy. I basically refuse to get into situations like that because of this. In that case, it's not the chilling effect of the kind that has to do with scholarship. It raises the question of whether anybody who does what we do as curators should involve themselves in these sorts of situations. If you're taking money from all sides, it's very hard to keep things straight. So my answer is a categorical no.

And let me just say about my earlier comment, that I was being polemical. I grant you that it is unfair to the people who trusted a supposedly reputable establishment, but the art world is not the exception to other businesses. If you express trust in ways you would never do in the business that made you all that money, then you are partly to blame.

**PC:** Actually, many lawyers said to me when I was covering this case that some of these collectors are very savvy business people who would have never accepted the kind of assurances in any other endeavor that they accepted in this case.

**AS:** A number of these collectors also hired private art advisors. It's sort of like hiring a private prosecutor to go after a case. They were financially compensated by Knoedler. I think these people were put in a position to protect their clients, and I don't think that they necessarily acted in a way that they should have. That opens another conversation about the role of that entire sort of genre.

**PC:** If art advisors are also getting a piece of the commission ...

**AS:** But that art advisor should have picked up the book on Rothko, if they didn't know better, and done some research.

**SF:** Perhaps people were simply blinded by the stature of Knoedler. I said earlier, and, Patti, you said it in print, that if it were a different gallery or a different conduit, if it were Glafira Rosales alone, this couldn't have happened. Forget anything else, the sheer imprimatur of Knoedler – like the Tiffany's analogy – assuaged a lot of doubts.

The second point that I said I wanted to return to is that many people saw only one or two works, or knew of only a small group. They were playing with a limited deck of cards, really, because someone else knew there were a lot of works. There is a very different attitude when you know that there are a lot of works by a lot of artists. Even Jamie's research, as terrific as he is, benefited from the fact that he was able to examine works by several artists and see anomalies or anachronisms that made absolutely no sense. They wouldn't have made sense with one artist, but when you see the same ones reappear with several artists, they certainly didn't. But almost no one else other than the gallery would have had that opportunity.

**PC:** That brings us back again to this issue of privacy. There was a museum, in fact, that was given one of these fake paintings. They didn't know about any of the others. So it was the same thing. Again it comes back to this. I don't know that there's necessarily an answer to it, but, certainly, that contributes to the fact that nobody knew that, other than the people at Knoedler.

**RS:** Walter Chrysler gave a lot of Elmer de Hory fakes to a museum as well. It's not the first time any of this has happened. Among the losses, again, are the chances to have interesting disagreements about the authenticity of works of art. Rembrandt's *Polish Rider* (Frick Collection) is in and out of the catalogue raisonné. *Young Woman at an Open Half-Door* (Art Institute of Chicago) is in and out of the catalogue. Those debates may never be settled. They are very interesting and very enlightening in terms of the works of art involved, and, again, the whole fixation on these issues shouldn't just be legal and financial.

**SF:** Yes, but there we're dealing with issues of Rembrandt and Studio or Rembrandt and Follower; misattributions, as opposed to deliberate fakes. That's, in fact, what you often get with the Old Master works.

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# Audience Q & A

**Q** Mr. Storr and Mr. Cahill, you identified the profession of the $17 million buyer (Mr. Lagrange). What relevance is it what he was doing for a living? The remark suggested that he was wealthy and, therefore, the crime was not as onerous as if he were a smaller buyer or a public institution.

**PC:** Does the buyer matter, wealthy or not, in terms of the crime?

**A JC:** Knoedler tried to make it matter in the lawsuits and said that these are wealthy and sophisticated people; they should know better. I don't think it does matter because this is not what they do professionally. They're not buying financial instruments in this case. But museums are affected by this because, very often, these wealthy folks, going back to the Medicis, give things away to museums and they're often consulting with museums. Museums can and do get duped, as do nonprofits, as do people, as I said, buying with the intention of giving it to a nonprofit or museum.

**Q (cont.):** I was hoping to ferret out the implications of Rob Storr's comment as opposed to what you're saying now.

**A RS:** I say this without any arrogance, but some of my best friends are billionaires, and none of them buy works at that price without more due diligence on their own part.

**Q** I'm an art dealer. Maybe I'm naïve about the process, but the evidence, which you all have talked about and that we've all read about, seems overwhelming. All the cases that came to court are civil cases. Why hasn't there been a criminal case brought against Freedman and Knoedler by the U.S. Attorney's office?

**A PC:** I'm sure John has interesting thoughts on this and probably knows more about it than I do, but I can say this. Number one, the resources that prosecutors have, federal or New York State, are limited, and they have to make decisions about what they're going to pursue. In terms of the FBI, the unit that is devoted to art is tiny, and, in fact, if this hadn't had the scale it did, I don't think that it would have gotten anywhere. As we can see, these cases take a long time; they're very expensive; they take a lot of resources. And, in a criminal case, the standard of proof is different; it's beyond a reasonable doubt, which is not so in a civil case. So, if you're a prosecutor and you have to prove a conspiracy – let's say, for example, that Knoedler or Ann Freedman knew beyond a reasonable doubt, as opposed to being negligent or stupid or duped – that's a tough standard of proof. Most prosecutors don't want to put in all of this time and money, particularly when they have other cases, if they don't think they have an excellent chance of winning.

**JC:** The federal prosecutors and the FBI, which do have limited resources, devoted a lot of resources to this case. They did a massive investigation. They helped out a lot. The thing that really broke the case was their discovery of Rosales' Spanish financial records, which is what got her in jail. So I don't want to say anything that suggests that they didn't. They worked hard; they did a good job working with the FBI. I and just about every other civil lawyer that worked on the case had the exact same view you do. It sure does seem like beyond a reasonable doubt to us, and the prosecutors assured us they were taking a hard look at it. Last time I heard, they were still taking a hard look at it, but they have their own discretion and their own resource issues. I'm not sure where that wound up, but that's certainly a question a lot of lawyers and certainly victims asked, and are still asking.

**SF:** In the last indictment, they said, "and others known and unknown."[3] They left that avenue open.

**Q** My name is David D'Arcy. I'm a journalist. If we're looking at some of the broader effects of the Knoedler case, can we look at this in the context of what happened in the early 1990s, when a lot of attention was placed on works of art that were seized from 1933 to 1945. People discovered that not only was there something called provenance, but, as Rob was suggesting obliquely, that it was their responsibility to find out what they were buying and there were ways of doing that, which the museums at the time were very resistant to acknowledging. Are we looking at this as a lesson for what people need to know when they're buying modern art? I agree with Rob that if you're paying $17 million for a work of art, you can afford to have somebody look at the science; you can afford to have connoisseurs look at the work; you can afford to have someone look at provenance. This is a reminder that seems extremely obvious right now. Is this another wave of recognition that much more due diligence has to be conducted?

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[3] *United States v. Bergantiños Diaz,* No. 14-cr-00217 (S.D.N.Y. *filed* Mar. 31, 2014).

> "The topic of this evening is "20/20 Hindsight," what we've learned from the case. And I think we've learned that everybody needs to take responsibility for a transaction – on both sides of the coin."
>
> — Adam Sheffer

**A** **AS:** What I think is interesting is that the information that was provided to the buyers came from the Knoedler Gallery. The buyers did not take it upon themselves necessarily to go out and do the due diligence in order to research this information. Perhaps they could have worked together with the gallery to say, "I read this book on Rothko, I don't understand why this is here." We live in a very sped up world where acquisitions happen much quicker. There are a lot more parties involved. The topic of this evening is "20/20 Hindsight," what we've learned from the case. And I think we've learned that everybody needs to take responsibility for a transaction – on both sides of the coin. You work together and you bring in parties independently, and you make it happen if it can. If there's resistance or questions, then you let it go.

**JC:** Not every one of these works sold for $17 million. That was the most expensive. Some sold in the 1990s for far less, in the six figures. It's not that they weren't bought by people with means, but the question we have to ask ourselves is, is that the kind of art market that we want to have? – A market where you walk into an art gallery and say, "I just want to introduce you to my friend, James Martin. Here's my lawyer, John Cahill. Here's a provenance researcher, and that's my brother-in-law, but he's also a connoisseur in the works of Jackson Pollock." And I would say that the answer is "no." I think that we as a society have said that.

Back in the '60s when Louis Lefkowitz was Attorney General of New York State and when IFAR was getting started, there was fraud in the art market. There was fraud in different ways. There were multiples being put out, and Lefkowitz said, "Let's change the law," so that if an art dealer gives you an invoice that says this is by Jackson Pollock, gosh darnnit, they have to stand behind that. That's a warranty that people have to stand behind. And if they tell you something that's not true, for instance, one of the experts said, "We know who David Herbert was. We know he was there." He said that to Jack Levy *after* IFAR had said it couldn't accept Levy's work as a Pollock. That's a fraud, and we're going to hold you to that. So the issue we have to grapple with is, should we really put this on the buyers, and is that the kind of art market we want, where New York is the center of the art world? I think the answer to that is "no." We want people to go into a reputable gallery and get reputable information. It's not that I don't suggest to clients – I make a living doing this to some extent – if you want to buy this, let's get a good contract. Let's check to see if it's a World War II-era looted painting, and other things. But, at the end of the day, the people who should be taking accountability, I think, are the people who are selling it, and the good ones do.

There were dealers who said, "Boy I feel lousy about it, but here's your million dollars back." I'll name them – Richard Feigen; one of the advisors, Jamie Frankfurt; Manny Silverman. They're people who, you could say, made mistakes, but they gave the money back. But even after this entire fraud was revealed, *New York Magazine* had a headline, "I am the Central Victim." Ok, but these other victims lost money. They're victimized in a different way. You have millions. They lost millions. Could you give it back, please? And they didn't. So that's what I think is shaking the art market a little bit. It's a legitimate point, but I don't think it's the art market we want to have. It's a different art market.

JOHN CAHILL = JC
PATRICIA COHEN = PC
SHARON FLESCHER = SF
JAMES MARTIN = JM
ADAM SHEFFER = AS
ROBERT STORR = RS

**RS:** I've bought millions of dollars of art for the Museum of Modern Art on behalf of the public who would see it, and my job as a curator was precisely to make sure that I bought something that was what it said it was. I don't see why we want to make a cozy art world where people who are buying privately don't have to at least do some of what it is that I did routinely. How cozy do you want this art world to be?

**Q (cont.):** I think it's a reasonable assumption to assume that any market is not entirely the market that you want to have.

**A JC:** Sure, and museums, as Mr. D'Arcy mentioned, even the Museum of Modern Art, have bought things that had issues with provenance. The question is, who should be accountable and who should pay the price for that when it happens? I'm not saying that people should be naïve, but if you're dealing with a reputable dealer, getting some straightforward promises and information, I think you should be able to count on that, as you do when you go to Tiffany's.

**SF:** One additional note on that, I'm not sure that all the expertise would be available to individual buyers anyway. For example, IFAR will only work for the owner; that protects us legally. So if it's someone who wants to purchase a work, there would have to be an agreement among several parties for us to do the research. We would not take a work on other than from the owner, who has to sign the agreement.

**Q** Were any of the artists' estates interested in taking part in this, in trying to put forward their concerns about frauds being sold in the name of the artist?

**A PC:** Jack Flam at the Dedalus Foundation, which was Robert Motherwell's foundation, really started this whole thing. They made a kind of original sin in that they did authenticate, or indicated that they were going to authenticate, one of the Motherwell fakes. But when they saw not one, but seven works, they started to ask questions. It was basically because Jack started asking around to different foundations that this knowledge pool that we were talking about developed, that they suddenly realized that it wasn't one artist or two artists, but a whole bunch from the same source, that the investigation began.

**Q** I think somebody would want to bring an action under the copyright act.

**A JM:** Didn't the Pollock-Krasner Foundation do that with the Matter paintings?

**SF:** The Foundation wouldn't give the permission to publish the Matter paintings as "Pollocks" in an exhibition catalogue.

**JC:** They don't have the copyright, the forger does. Pei-Shen Qian had some claims here, including from some of our presentations.

**Q** I wanted to respond to that last question because next to me are Gretchen Diebenkorn Grant and Dick Grant (the daughter and son-in-law of artist Richard Diebenkorn). They saw the first works, the Diebenkorns, that Rosales brought to Knoedler, and they told Ann Freedman (in 1994) that the works were "not right," which we all know means that they were fake.

**PC:** You should identify yourself.

**Q (cont.):** I'm Emily Reisbaum, and I'm here with my partner, Gregory Clarick. We are the lawyers for Domenico and Eleanor De Sole, who tried the case.

**A PC:** The Diebenkorns really is the case – you talk about due diligence – it was very clear in the 1990s that there were flags raised. The IFAR investigation was the most prominent, but there were definitely flags raised earlier.

**SF:** But, as I said before, IFAR didn't know that the Diebenkorn Foundation had raised those concerns. We didn't even know there were Diebenkorns in the group.

**Q (cont.):** That was Knoedler's MO, to hide that information from others.

**PC:** This discussion was really enlightening. Thank you all for coming, and thank you, panelists.

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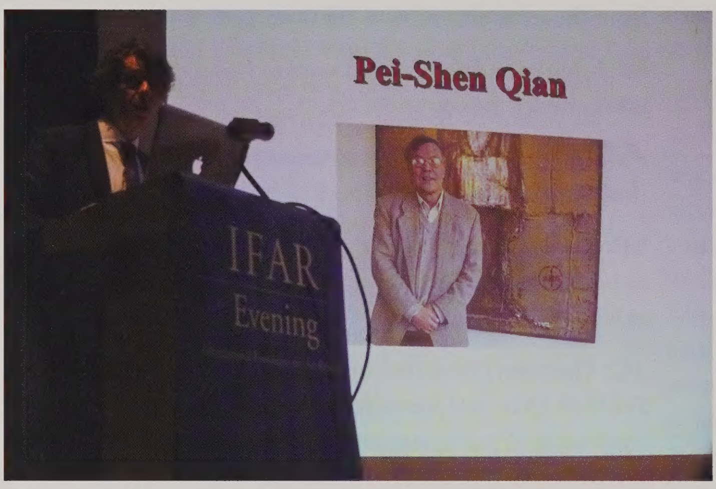
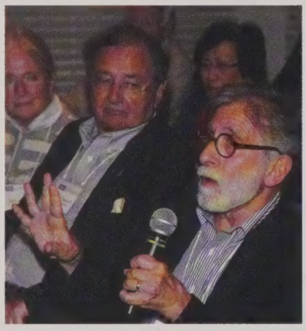
# SCENES FROM AN IFAR EVENING



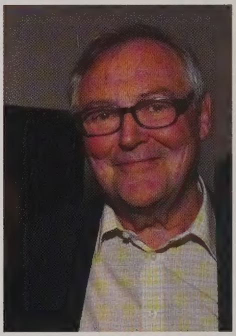
John Cahill speaking about the Knoedler Gallery forger.

Left to right:
Betty Krulick, John Cahill, and Linda Selvin.

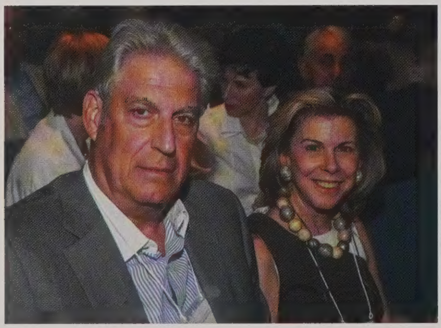


James Reinish with microphone. Samuel Sachs II, IFAR Board member, to his left.

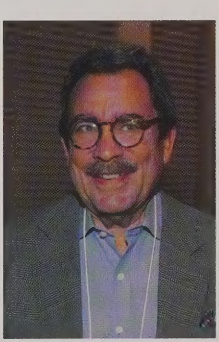
Left to right: Frederick Elghanayan, Jeffrey Haber, Patricia Tompkins, and Andrew Marks.



David Nash,
IFAR Board member.



Allen Adler and Frances Beatty.



Frederick Hill.

Pauline Metcalf (left) and Gertrude Wilmers, IFAR Board member.

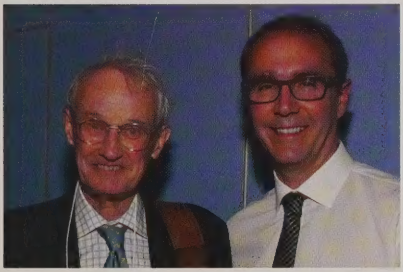
Credit for these photos and all other images of speakers and guests at this program: Steven Tucker.

# LESSONS FROM THE KNOEDLER/ROSALES AFFAIR

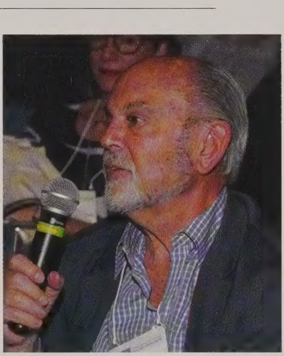
Left to right: John Cahill; Sharon Flescher, IFAR's Executive Director; Anthony Williams, IFAR Board Chairman; and Virgilia Klein, IFAR Board member.

David D'Arcy, Jane Kallir, Gregory Clarick, and Richard Feigen.

Adam Sheffer, Hanna Gisel, and Linda Blumberg.



Walter Bottger (left) and James Martin.



Errol Rudman with microphone.

Sigrid Freuendorfer (left) with Mary-Anne Martin.

Charles Bergman, (seated) with, from left: Irving Sandler, Robert Storr, Stuart Levy, and Samuel Sachs II.

Debra Bates, Anthony Williams, and Stephen S. Lash.

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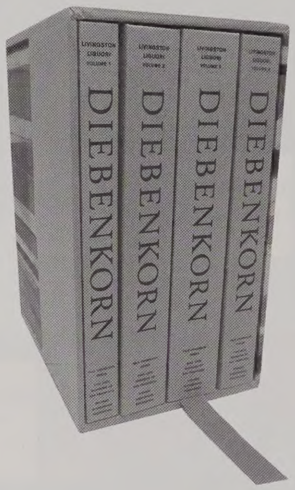

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title: *Record of Works by Winslow Homer* [in five volumes]
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publisher, volumes IV and V: The Goodrich-Homer Art Education Project, New York, 2012 and 2014

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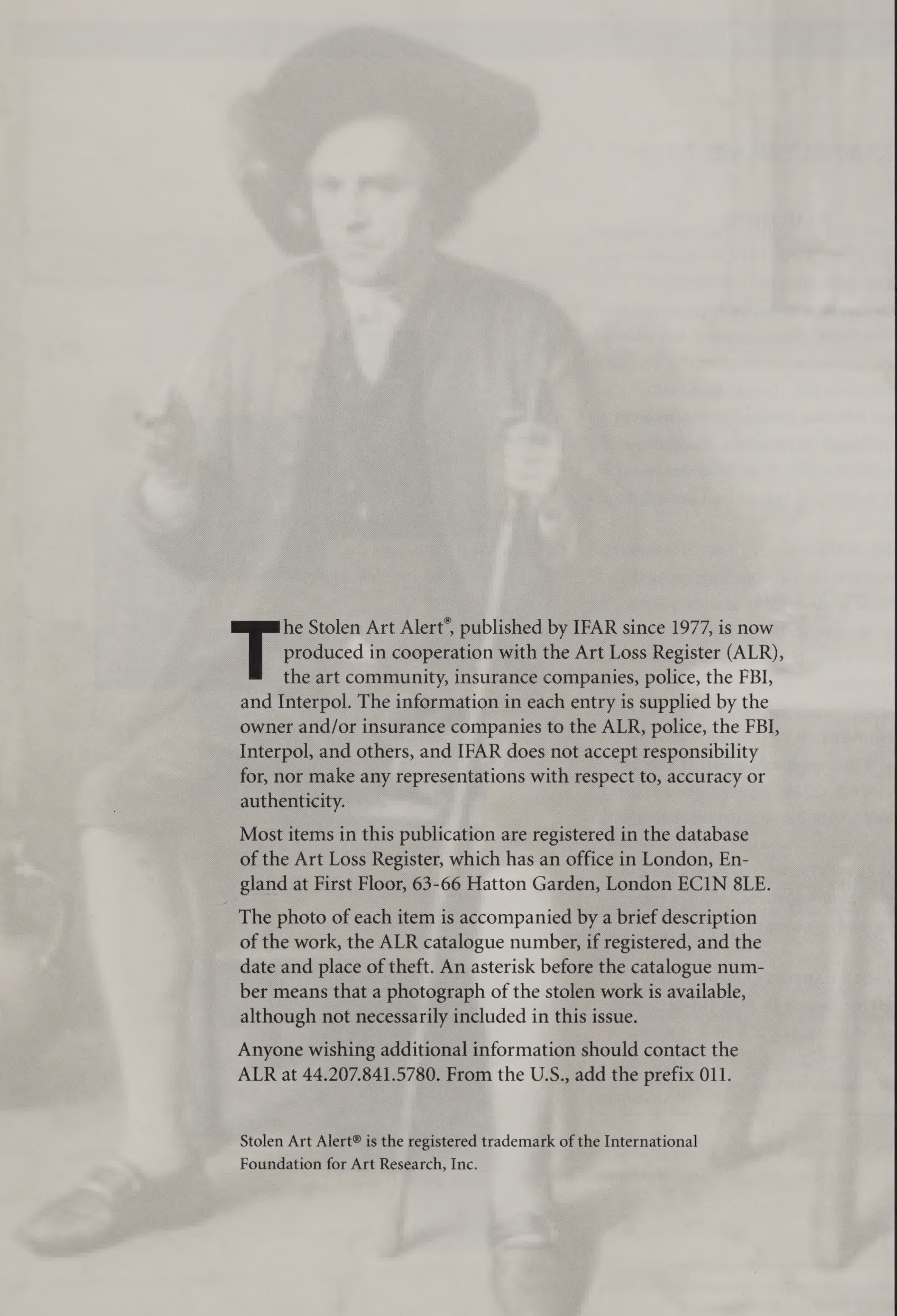

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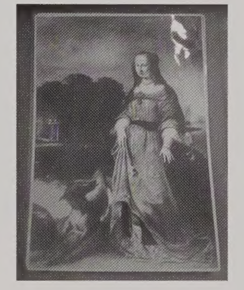
# STOLEN ART*

## PAINTINGS

54. **KAREL APPEL** (Dutch, 1921-2006). ***Dance in Green,*** 1978. See color photo on inside back cover.

55. **FERDINAND BOL** (Dutch, 1616-1680). ***The Pearl Necklace (Woman with Necklace and Greyhound).*** Oil painting. 90 x 140 cm (approx. 35 ⅜″ x 55″). *L16.777. Stolen from a private residence in Wiesbaden, Germany on May 14, 2016.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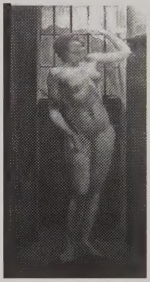
56. **EDWARD BURNE-JONES** (English, 1833-1898). ***Hope in Gaol.*** Unfinished oil painting. 216 x 82 cm (approx. 85″ x 32 ⅛″). *L16.680. Stolen from a private residence in London, England on June 5, 2016.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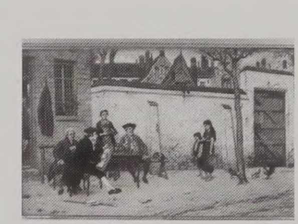
57. **THEODORE CERIEZ** (Belgian, 1832-1904). ***Scene with Young Man Painting.*** 37 x 70 cm (approx. 14 ½″ x 27 ½:″). Signed l/r. *L16.65. Stolen in Brussels, Belgium in January 2015.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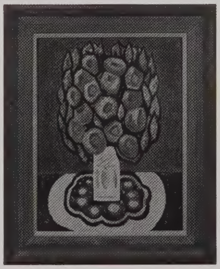
58. **LYONEL FEININGER** (German-American, 1871-1956). ***Bridge in Paris,*** 1907. See color photo on inside back cover.

59. **MARSDEN HARTLEY** (American, 1877-1943). ***Maine Flowers II,*** 1936. Oil on canvas, mounted on board. (23 ¾″ x 18″). *L16.907. Stolen from a business in Abbott Park, IL in 1986 and replaced with a copy.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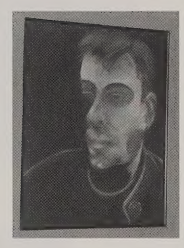
*Numbering for the year 2016 Cumulative Index of Stolen Art began with Vol. 17, no. 1.

## STOLEN ART (cont.)

The following four paintings were among five portraits by **FRANCIS BACON** (British, 1909-1992) stolen from the private residence of financier José Capelo Blanco, a close friend of the artist and frequent subject, in Madrid, Spain in July 2015. *L15.1: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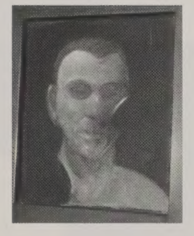
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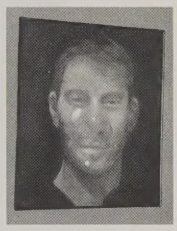
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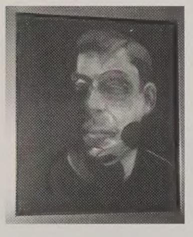
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60. ***Portrait,*** c. 1980. Oil and pastel on canvas. 35.51 x 31 cm (approx. 14″ x 12″). On the verso: signed and dedicated to José Capelo Blanco.

61. ***Portrait,*** c. 1980. Oil and pastel on canvas. 51 x 35.51 cm (approx. 20″ x 14″). On the verso: signed and dedicated to José Capelo Blanco.

62. ***Portrait,*** c. 1980. Oil and pastel on canvas. 35.51 x 31 cm (approx. 14″ x 12″). On the verso: signed and dedicated to José Capelo Blanco.

63. ***Portrait,*** c. 1980. Oil and pastel on canvas. 35.51 x 31 cm (approx. 14″ x 12″). On the verso: signed and dedicated to José Capelo Blanco.

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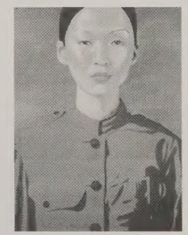
The following three paintings by **CHRISTIAN DEVELTER** (Belgian, born 1968) were stolen in Vienna, Austria on March 24, 2016. *L16.34: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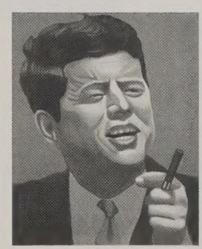
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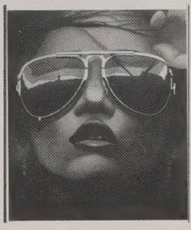
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64. ***Comrade Lin,*** 1968. Oil on canvas. 217 x 106 cm (approx. 85 ⅜″ x 41 ¾″).

65. ***JFK,*** 1968. Oil on canvas. 20 x 100 cm (approx. 47 ¼″ x 39 ⅜″).

66. ***Joy of Life,*** 1968. Oil on canvas. 200 x 170 cm (approx. 78 ¾″ x 67″).

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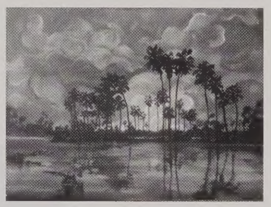
The following two paintings by **MAURA LATTY** (American, contemporary) were stolen from an exhibition in Los Angeles, CA on April 23, 2016. *L16.546:

67. ***The Crane,*** 2014. Oil on canvas. 76.2 x 101.6 cm (30″ x 40″). Signed and dated l/r.

68. ***The Landing,*** 2014. Oil on canvas. 60.96 x 91.44 cm (24″ x 36″).



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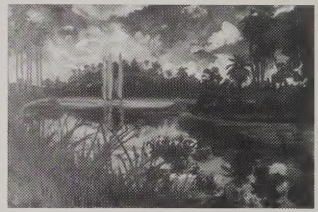

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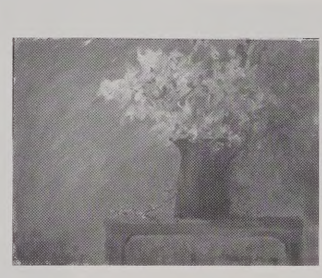
The following two paintings by **PEGGY CASEY MASON** (American, contemporary), were stolen from a gallery in Rumson, NJ on September 30, 2011. *L16.747:

69. ***The Brown Jug,*** 2009. Oil on panel. 22.86 x 30.48 cm (9″ x 12″). Signed l/r.

70. ***Reaching,*** 2007. Oil on panel. 40.64 x 30.48 (16″ x 12″).



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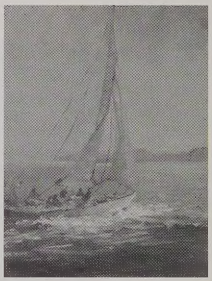

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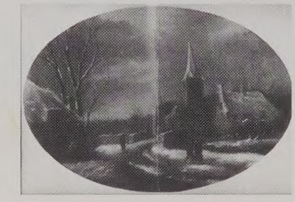
71. **KLAES MOLENAER** (Dutch, 1630-1676). ***Winter Landscape.*** Oil on canvas. 30 x 41 cm (approx. 11 ¾″ x 16″). *L16.65. Stolen in San Marino, Borgo Maggiore on May 30, 2016.

72. **LOUIS MARIE DE SCHRYVER** (French, 1862-1942). ***Floral Still Life.*** Oil on canvas. 90 x 120 cm (approx. 35 ⅜″ x 47 ¼″). Signed l/r. *L16.884. Stolen from an auction house in Paris on January 29, 2016.

73. **JEAN-BAPTISTE MADOU** (Belgian, 1796-1877). ***The Smoker.*** Oil on canvas. 33 x 26 cm (approx. 13″ x 10 ¼″). *L16.65. Stolen in Brussels, Belgium in January 2015.

74. **HENRY WILKINSON** (English, 1921-2011). ***Retriever in Countryside.*** Oil on canvas. 51 x 66 cm (approx. 20″ x 26″). *L16.845. Stolen from an estate in North Yorkshire, England on July 11, 2015.



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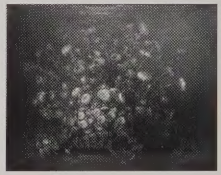

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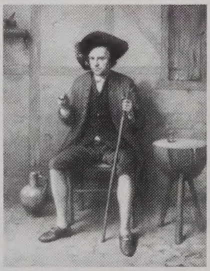
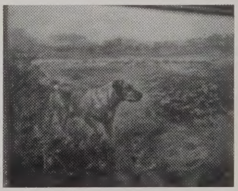


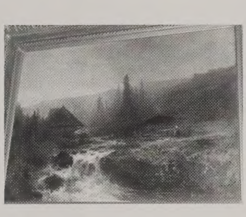
73



74

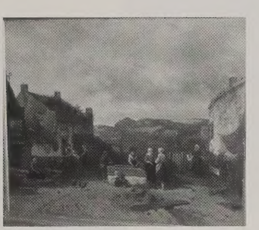
## STOLEN ART (cont.)

The following two paintings were stolen from a private residence in Culemborg, The Netherlands on July 4, 2016. *L16.915:



75

75. **JOHANNES WERNARDUS BILDUS** (Dutch, 1811-1890). ***At the Waterfall.*** Oil on panel. 40 x 50 cm (approx. 15 ¾″ x 19 ¾″). Signed l/r: JW.



76

76. **SALOMON LEONARDUS VERVEER** (Dutch, 1813-1876). ***A Dune Village,*** 1866. Oil on panel. Oil on panel. 40 x 50 cm (approx. 15 ¾″ x 19 ¾″).

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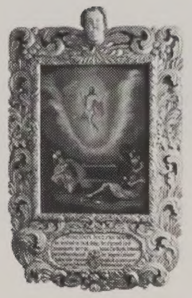
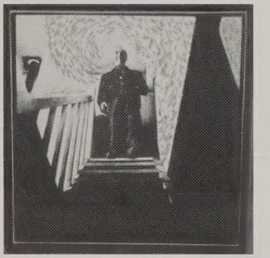


77

77. Unknown artist (German, 17th century). ***Resurrection (Floating Christ),*** 1693. Oil on canvas on wood panel. 159 x 98 cm (approx. 62 ½″ x 38 ½″). The cartouche on the lower part of the frame includes a coat of arms and an epitaph for Christoph Schwartz. *L16.370. Stolen from a church in Rosstal, Germany February 21-23, 2016.

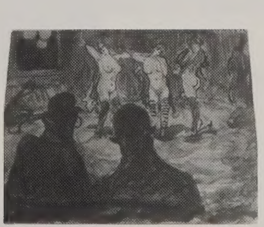
### Mixed Media



78

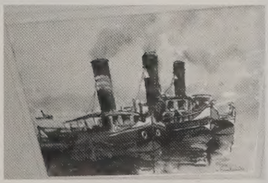
78. **GEORGES VANTONGERLOO** (Belgian, 1886-1965) / **LOTHAR WOLLEH** (German, 1930-1979). ***Man in Front of Stairs,*** c. pre-1974. Mixed media with photograph on canvas. 49 x 48 cm (approx. 19 ¼″ x 19″). *L16.277. Stolen from storage in Düsseldorf, Germany on May 29, 2015.

### Works on Paper



79

79. **ALBERT GLEIZES** (French, 1881-1953). ***Au Salon,*** 1908. India ink, pen, pencil, wash on cardboard. 20 x 17 cm (approx. 7 ¾″ x 6 ¾″). Sgined. l/r. *L16.65. Stolen in Paris, France on January 3, 2016.

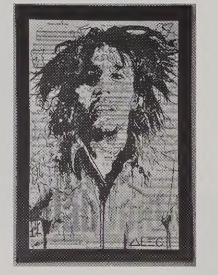


80

80. **PAUL EMILE PISSARRO** (French, 1884-1972). ***Boats,*** 1930. Gouache on paper. 45.72 x 60.96 cm (18″ x 24″). Signed l/r: Paulemile. *L16.893. Stolen in transit in London, England on July 19, 2016.

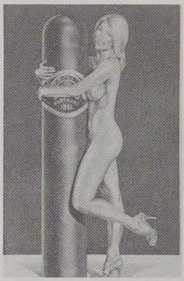
## Prints, Etchings, Lithographs

81. **ALEC MONOPOLY** (American, born 1986). ***Portrait of Bob Marley,*** 2012. Screenprint. 91.44 x 60.96 cm (36″ x 24″). Signed l/r. Ed. no. 50/50. *L16.621. Stolen from a gallery in Los Angeles, CA on March 19, 2016.



81

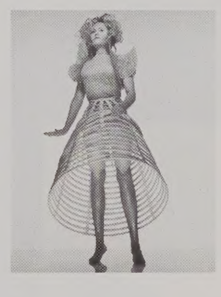
82. **MEL RAMOS** (American, born 1935). ***Hav-a-Havana #11.*** Lithograph on paper. Image size: 76.5 x 48 cm (approx. 30″ x 19″); paper size: 89 x 60 cm (approx. 35″ x 23 ⅝″). Ed. no.: 1/50-30/50. *L16.510. 30 prints, numbered 1-30, stolen in transit in Vienna, Austria on April 20, 2016.



82

## Photographs

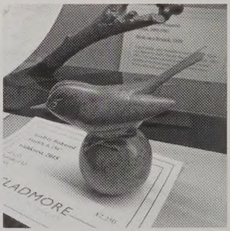
83. **NICK KNIGHT** (English, born 1958). ***Aimee Mullins,*** 1998. 116.84 x 83.82 cm (46″ x 33″). *L16.648. Stolen from a storage facility in France on September 1, 2010.



83

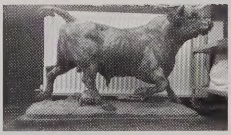
## Sculpture

84. **GEOFFREY DASHWOOD** (English, born 1947). ***Goldcrest,*** 1995. Bronze with a green patina. 10.16 x 12.7 x 5.08 cm (4″ x 5″ x 2″). Signed G. Dashwood and marked A/C (artist's copy) from an edition of 12. *L16.774. Stolen from an art fair in England on July 6, 2016.



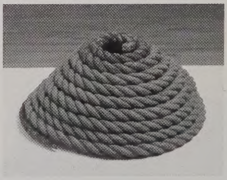
84

85. **HENRY WILLIAM BANKS DAVIS** (English, 1833-1914). ***A Trotting Bull,*** 1870. Large bronze sculpture. Engraved on the base plate: artist's name, initials and date. *L16.841. Stolen from a private residence in Monmouthshire, Wales on July 23, 2016.



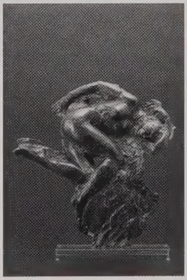
85

86. **VICTORIA FULLER** (American, born 1953). ***Rope Trick Sculpture,*** 2014. Cast resin, epoxy clay, acrylic paint. 28 x 61 x 61 cm (11″ x 24″ x 24″). Signed and dated on the inside back rim. *L16.864. Stolen from the artist's studio in Chicago, IL on August 2, 2016.



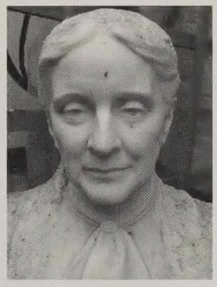
86

87. **DYLAN LEWIS** (South African, born 1964). ***S261-Trans-Figure XIV Maq.*** Bronze. 61 x 20 x 60 cm (approx. 24″ x 7 ¾″ x 23 ½”). Ed. no. 5/12. *L16.899. One of seven sculptures by the artist stolen in transit in Colchester, England on August 1, 2016.



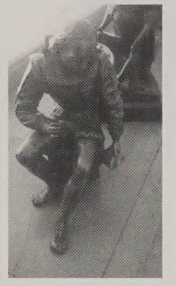
87

## STOLEN ART (cont.)



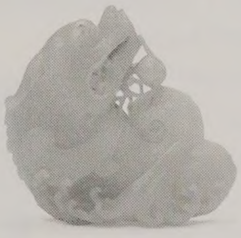
88

88. **ALFRED BERTRAM PEGRAM** (English, 1873-1941). ***Bust of the Artist's Mother, Alice Pegram (née Freeman),*** c. 1900. Marble. 60.96 x 30.48 x 20.32 cm (24″ x 12″ x 8″). *L16.583. Stolen from a private residence in Essex, England on April 19, 2016.



89

89. **JEAN JULES SALMSON** (French, 1823-1902). ***William Shakespeare,*** 1890. Bronze with a gold patina. 30.48 x 25.4 x 25.4 cm (12″ x 10″ x 10″). *L16.746. Stolen from a gallery in Berkley, MI on June 29, 2016.

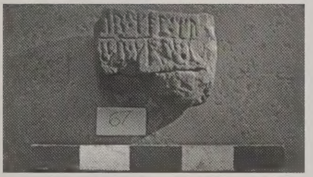


90

90. Unknown Artist. ***Dragon Fish Emerging from the Waves,*** c. 1900. Celadon jade. 13 x 10 cm (approx. 5″ x 4″). *L16.852. Stolen from a ware-house in Neuilly-sur-Marne, Paris, France on June 22, 2016.

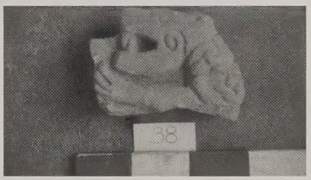
### Antiquities

The following three Viking (9th-10th centuries) sculptural stone fragments were stolen in Darlington, England on March 15, 2016. *L16.396:



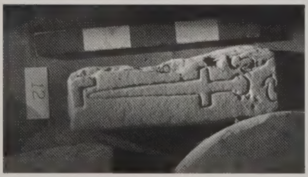
91

91. ***Fragment.*** Stone. 21 x 18 x 9.5 cm (approx. 8 ¼″ x 7″ x 3 ¾″). Runic inscription: '(ept) ir molmu: (re) isit kris (in memory of Mael-Muire / … raised cross').



92

92. ***Fragment of a Carved Bear's Head.*** Stone. Possibly from a "hogback," a Viking grave marker. 24.5 x 18 x 10 cm (approx. 9 ½″ x 7″ x 4″).



93

93. ***Fragment of a Medieval Cross Slab.*** Stone. Carved with a small sword. 43 x 13 cm (approx. 17″ x 5″).

### Glass

94. **GALEON HONE**, Attrib. to (English, 17th century). ***Tudor Stained Glass Panel Depicting the Prophet Ezekiel,*** c. 1530-1550. See color photo on inside back cover.

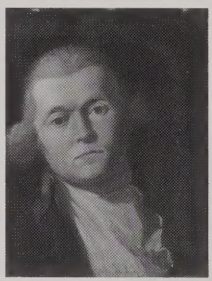
# MISSING ART

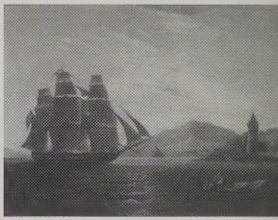
## Paintings

The following two paintings were missing in transit between London, England and France on January 1, 2009. *L16.873:

8. **JOSHUA SAEW** (Follower of) (English, 1701-1799) ***Portrait of a Gentleman.*** Oil on canvas. 47 x 36.2 cm (18 ½″ x 14 ¼″).

9. Unknown Artist (English, 19th century). ***The Frigate HMS Pearl, 32 Guns, Entering the Faro, Messina.*** Oil on canvas. 40.01 x 49.99 cm (15 ¾″ x 19 ¾″).


8


9

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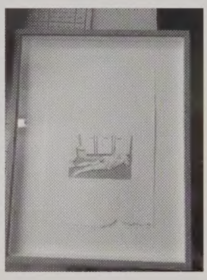
The following works by **MATTHEW “MAT” COLLISHAW** (English, born 1966) were missing in transit between Switzerland and London, England on March 7, 2016. *L16.781:

## Works on Paper

10. ***Suicide Suite,*** 1993. Watercolor on paper. 40 x 30 cm (approx. 15 ¾″ x 11 ¾″). Signed l/r: M. Collishaw 93. Two works – numbers 1 and 2 of an edition of seven, are missing.


10

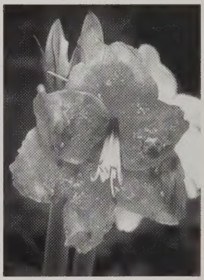
## Mixed Media

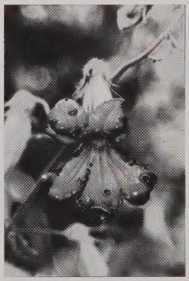
11. ***Infectious Flower – Intra-Epidermal Carcinoma,*** 1996. Photographic transparency in a wooden box with a glass window. 50 x 50 x 10 cm (approx. 19 ¾″ x 19 ¾″ x 4″). Ed. no. 3/3.

12. ***Infectious Flower – Metastases from a Malignant Melanoma,*** 1996. Photographic transparency in a wooden box with a glass window. 50 x 50 x 10 cm (approx. 19 ¾″ x 19 ¾″ x 4″). Ed. no. 1/3.

13. ***Infectious Flower – Zoster of Supravicular Dermatomes,*** 1996. Photographic transparency in a wooden box with a glass window. 50 x 50 x 10 cm (approx. 19 ¾″ x 19 ¾″ x 4″). Ed. no. 2/3.

14. ***UV Garden – Fairy Offering Flowers to Iris,*** 2008. Silkscreen printed on acrylic with UV light and light fixture, housed in a clear acrylic box with 3 UV strip lights. 70 x 50 x 10 cm (approx. 27 ½″ x 19 ¾″ x 4″).


11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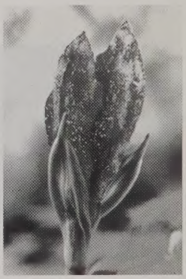
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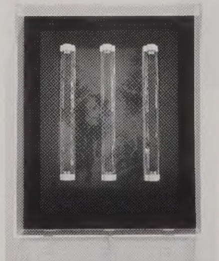
14

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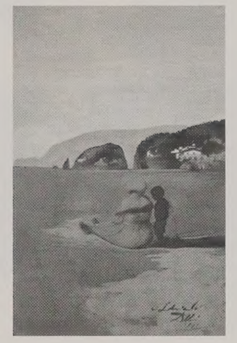
*Numbering for the year 2016 Cumulative Index of Missing Art began with Vol. 17, no. 1.

# RECOVERED ART

## Paintings

The following two paintings, stolen by armed robbers from the Scheringa Museum of Realist Art in Spanbroek, The Netherlands on May 1, 2009 (*L09.335 – see *IFAR Journal*, Vol. 11, no. 1, 2009, p. 48 and inside back cover), were recovered and handed over to Scotland Yard in July 2016:

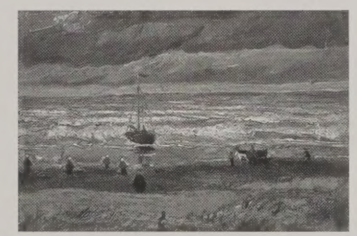

45

45. **SALVADOR DALÍ** (Spanish, 1904-1989). ***Adolescence,*** 1941. Gouache. 44.8 x 30.2 cm. Signed l/r.

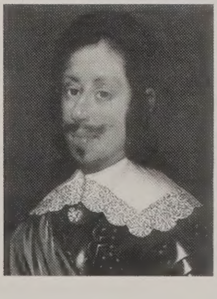
46. **TAMARA DE LEMPICKA** (Polish/American, 1898-1980). ***The Female Musician,*** 1929. See color photo on inside back cover.

The following two paintings by **VINCENT VAN GOGH** (Dutch, 1853-1890) were stolen from the Van Gogh Museum in Amsterdam, The Netherlands during an early-morning break-in on December 7, 2002, *L02.6943 (see *IFAR Journal*, Vol. 5, no. 3, 2002, pp. 6-7 and item nos. 57 and 58, p. 61) and recovered by anti-mafia police in Naples, Italy in September 2016.

47. ***Congregation Leaving the Reformed Church in Nuenen,*** 1884. See color photo on inside back cover.

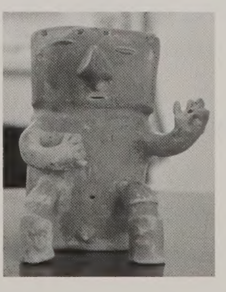

48

48. ***View of the Sea at Scheveningen***, 1882. Oil on canvas. 34.5 x 51 cm


49

49. **JUSTUS SUSTERMANS** (Studio of) (Flemish, 1597-1681). ***Portrait of Ferdinando II de Medici,*** Stolen in transit during the Cologne Fine Art Fair in Germany on November 14, 2008. *C08.120. Recovered with the help of the ALR in London in 2016.

## Pre-Columbian Antiquities


50

50. ***Quimbayan Male Slab Figure*** (Colombia). Ceramic. Stolen from a museum in Cartagena, Colombia in 1939. Recovered with the help of Art Recovery Group in London in 2016 after being consigned to Hampstead Auctions for sale. The work was officially returned to Colombian authorities in September.

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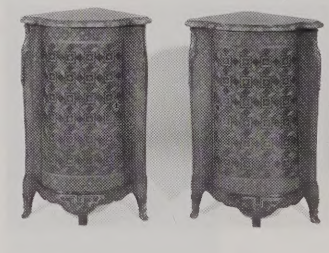
*Numbering for the year 2016 Cumulative Index of Recovered Art began with Vol. 17, no. 1.

## Decorative Arts

### Furniture

51. **JACQUES-LAURENT COSSON** (French, 1737-1812ury). ***Pair of Louis XVI Marquetry nd Parquetry Encoignures.*** Wood and marble. *L14.1107. Stolen from a private residence in The Cotswolds in England in October 2014. Recovered with the help of the ALR in December 2014.

51



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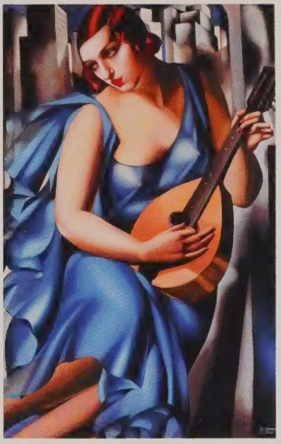
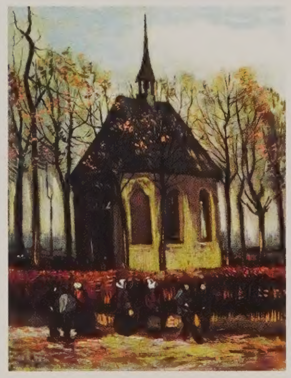
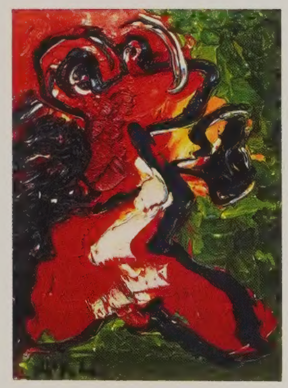
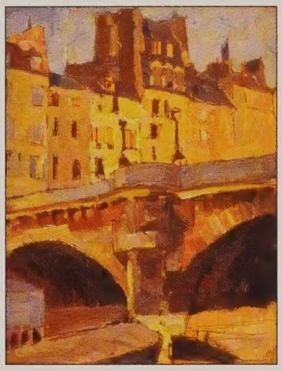
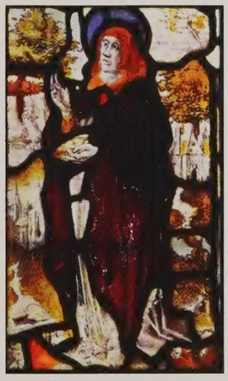
**Contact: Steven J. Braun, Esq. ▪ sbraun@krigelandkrigel.com**


46


47


54


58


94

# RECOVERED ART

## Paintings

**46. TAMARA DE LEMPICKA** (Polish/American, 1898-1980). ***The Female Musician,*** 1929. Oil on canvas. 130 x 73 cm. (approx. 51 ¼″ x 28 ¾″). Signed l/r: De Lempicka 29 Paris. Stolen by armed robbers from the Scheringa Museum of Realist Art in Spanbroek, The Netherlands on May 1, 2009 (*L09.335 – see *IFAR Journal,* Vol. 11, no. 1, 2009, p. 48 and inside back cover); recovered and handed over to Scotland Yard in July 2016. See also recovered item no. 45.

47. **VINCENT VAN GOGH** (Dutch, 1853-1890). ***Congregation Leaving the Reformed Church in Nuenen,*** 1884. Oil on canvas. 42.3 x 32.1 cm (approx. 16 ½” x 12 ½”). *L02.6943. Stolen from the Van Gogh Museum in Amsterdam, The Netherlands on December 7, 2002 and recovered by anti-mafia police in Naples, Italy in September 2016. See also recovered item no. 48.

# STOLEN ART

## PAINTINGS

**54. KAREL APPEL** (Dutch, 1921-2006). ***Dance in Green,*** 1978. Oil on canvas. 50 x 40 cm (approx. 19 ¾″ x 15 ¾″). *L16.200. Stolen from a gallery in Amsterdam, The Netherlands on February 7, 2016.

**58. LYONEL FEININGER** (German-American, 1871-1956). ***Bridge in Paris,*** 1907. Oil on board. 17.81 x 13.51 cm (approx. 7″ x 5 ¼″). *L16.877. Stolen from a gallery in New York on July 1, 2016.

## Glass

**94. GALEON HONE**, Attrib. to (English, 17th century). ***Tudor Stained Glass Panel Depicting the Prophet Ezekiel,*** c. 1530-1550. 37 x 20 cm (approx. 4 ½″ x 7 ¾″). *L16.909. Stolen from Withcote Chapel, Leicestershire, England between July 24 and July 30, 2016.

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Art Theft:
its scope, its impact, and its control
by Bonnie Burnham

IFAR Journal
INTERNATIONAL FOUNDATION FOR ART RESEARCH

SPECIAL ISSUE:
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also
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INCORPORATING STOLEN ART ALERT

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